F.O.I.A.

JULIUS ROSENBERG ET AL.

FILE DESCRIPTION

HEADQUARTERS FILE

SUBJECT Silvermaster

FILE NO. 65-56402

WAIH // CTE(S)

VOLUME NO. 70

SERIALS

1508 - 1550

Newman / Marks Wahl

1 W NFW

↗

108

Bureau of Investigation
United States Department of Justice

SECRET

American Embassy
London, England
August 26, 1946

51475

VIA AIR POUCH

ATTENTION: SIS EUROPEAN DESK

Director, FBI
Washington, D. C.

Re: THEODOR BAUMGOLD
ESPIONAGE - R

Dear Sir:

The following information has been received from

(S) [redacted] b1 7(S)

(S) [redacted] b1

(S) [redacted] b1

(S) [redacted] b1

(S) [redacted]

Very truly yours,

65-56402-1508

J. A. Cimperman
Legal Attache

JAC:MB

RECORDED & INDEXED 34

SEP 12 1946

SECRET

SEP 19 1946

VICTORY BUY UNITED STATES WAR BONDS AND STAMPS

304 PW 3/105 3/31/78 Declassify on: OADR

Federal Bureau of Investigation

United States Department of Justice

American Embassy
London, England
August 23, 1946

SECRET

ATTENTION: SIS EUROPEAN DESK

VIA AIR POUCH

Director, FBI
Washington, D. C.

INTELLIGENCE - Espionage - R

Re: THEODOR BAUMGOLD
ESPIONAGE - R

Dear Sir:

Reference is made to letter from this office dated August 16, 1946 reporting information received

[redacted] (S) b1

For the further information of the Bureau, the following additional information has now been received

[redacted] b1

(S) [redacted]

(S) [redacted]

(S) [redacted]

(S) [redacted]

(S)

SECRET

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10700

SECRET

[redacted]

Very truly yours,

J. A. Cimperman,
Legal Attache.

JAC:MB
65-595

SECRET

CONFIDENTIAL

F.B.I. TELETYPE

3/31/84
Classified by Sgt 2 Auj 3/185
Declassify on: DADR

WASHINGTON FROM NEW YORK 7 11 4-17 PM
DIRECTOR URGENT

GREGORY. ESPIONAGE - R.

[redacted]

b1

(C) 9 CIRCLE

EX-24 RECORDED & INDEXED

165-56402-15

SEP 13 1946

NY R 7 WA

RECEIVED 9-11-46 3:27 EST

[redacted]

b1

(C) CONFIDENTIAL

5a SEP 26 1946

104

FEDERAL BUREAU OF INVESTIGATION

Form No. 1
THIS CASE ORIGINATED AT NEW YORK

FILE NO. 65-1451

REPORT MADE AT	DATE WHEN MADE	PERIOD FOR WHICH MADE	REPORT MADE BY
Saint Louis, Missouri	9/3/46	8/7,27/46	GERALD C. SNELL dck

TITLE	CHARACTER OF CASE
NATHAN GREGORY SILVERMASTER, was., et al	ESPIONAGE - R

SYNOPSIS OF FACTS: [redacted]

DEFERRED RECORDING

- RUC -

REFERENCE: Letter from the Newark Field Division to the New York Field Division dated August 2, 1946.
Letter from the Washington Field Division to the St. Louis Field Division dated August 16, 1946.

DETAILS: AT SAINT LOUIS, MISSOURI

[redacted]

APPROVED AND FORWARDED: [signature] SPECIAL AGENT IN CHARGE

DO NOT WRITE IN THESE SPACES

65-56402-1511

RECORDED & INDEXED

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 12-22-83 BY SP-3 [illegible]

COPIES OF THIS REPORT
5 Bureau
3 New York
2 Washington Field (Info)(100-17493)
2 Saint Louis

SEP 10 1946

COPIES DESTROYED 11/4/58

SL #65-1451

[redacted]

No leads are being set out in instant report, inasmuch as this office is not familiar with previous investigation conducted in instant case. This case is being considered referred upon completion to the office of origin.

- REFERRED UPON COMPLETION TO THE OFFICE OF ORIGIN -

F.B.I. RADIOGRAM

Mr. Tolson
Mr. E. A. Tamm
Mr. Clegg
Mr. Coffey
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Mohr
Mr. Carson
Mr. Harbo
Mr. Hendon
Mr. Mumford
Mr. Jones
Mr. Quinn Tamm
Mr. Nease
Miss Gandy

Classified by 3042 PWJ/AB
Declassify on: OADR

[redacted] (C) b1

Re: Bernard S. Redmont
Bernard S. Redmont

FROM BUENOS AIRES 9-10-46 NR 71 5:24 ~~6:10~~ PM EST (C)

GREGORY. EMBASSY RECEIVING VIOLENT ATTACKS IN COMMUNIST ORGANS HERE DUE ALLEGED STATEMENTS MADE BEFORE AMERICAN LEGION AUGUST 5. EXPEDITE REPLY TO MY CABLES NUMBERS 64 AND 66.

RECEIVED 9-10-46 6:[illegible] PM
SEP 20 1946 (C) U

RECORDED 65-56402
SEP 18 1946
(C) U

[redacted] (C) b1

102

United States Department of Justice
Federal Bureau of Investigation
New York, N. Y.

IN REPLY, PLEASE REFER TO
FILE No. _____

PERSONAL AND CONFIDENTIAL

September 11, 1946

Director, FBI

Attention: Assistant Director D. M. Ladd

Re: GREGORY
ESPIONAGE - R;
MAURICE HALPERIN

Dear Sir:

There are being delivered herwith by Special Agent Donald E. Shannon one copy of each of the items furnished by confidential source having access to the effects of the above-captioned individual [redacted]

b7D

Very truly yours,

Edward Scheidt

EDWARD SCHEIDT,
Special Agent in Charge

JTH:RAA
65-14603

Enclosures

Material returned 4-12-46

DECLASSIFIED BY SP-5 RIB/MR
ON 4-22-83
3042 PWT/JS 6/21/88

RECORDED 65 56402 1513

EX-31

68 SEP 25 1946 COPIES DESTROYED

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 4-22-83 BY SP-5 RJM/MR
6/21/88 2042 pastjs

FEB 2 1950

65-56402-1514

CHANGED TO

65-58660-X8

99

Federal Bureau of Investigation
United States Department of Justice
Suite 426, 111 Sutter Street
San Francisco 4, California
August 21, 1946

Mr. Tolson	
Mr. E. A. Tamm	
Mr. Clegg	
Mr. Glavin	
Mr. Ladd	
Mr. Nichols	
Mr. Rosen	
Mr. Tracy	
Mr. Carson	
Mr. Egan	
Mr. Gurnea	
Mr. Harbo	
Mr. Hendon	
Mr. Pennington	
Mr. Quinn Tamm	
Mr. Nease	
Miss Gandy	

CONFIDENTIAL

FI

Director, FBI

Re: GREGORY
ESPIONAGE - R

Dear Sir:

Reference is made to the teletype from this office to the Bureau, Washington Field, and New York dated April 12, 1946, concerning FAY FRANCES KING.

The following additional information concerning FAY FRANCES KING has been received from the Peninsula Credit Bureau, Monterey, California: FAY FRANCES KING is married to LEON M. KING and they reside at 721 - 19th Street, Pacific Grove, California. LEON M. KING is 58 years old. He and his wife first came to Pacific Grove about November 1944 from Fresno, California. Their address at Fresno was 2640 Thomas Street. LEON M. KING is employed as a druggist at the Midway Drug Store, 601 Lighthouse Street, Monterey, California. He has been employed there since January 1, 1945. They have a satisfactory credit record.

The files of this office were searched under the name of LEON M. KING, but no prior record was located.

Very truly yours,

DECLASSIFIED BY SP-5 RJH/RP
ON 4-22-83
3048 PWT/JS 6/21/88

H. B. Fletcher
H. B. FLETCHER
SAC

100-25451
DET:dgk

cc - Washington Field

RECORDED
&
INDEXED

165-56402 15 15

EX-14

SEP 20 1946

FOR VICTORY BUY UNITED STATES WAR BONDS AND STAMPS

97

United States Department of Justice
Federal Bureau of Investigation
234 U. S. Court House
Foley Square
New York 7, N. Y.

IN REPLY, PLEASE REFER TO
FILE NO.

PERSONAL AND CONFIDENTIAL

August 8, 1946

Director, FBI

Re: GREGORY
ESPIONAGE - R
(Refer 5 IS)

Dear Sir:

Reference is made to the report of Special Agent John T. Hilsbos dated July 17, 1946, at New York City, wherein there may be found on page 8 certain information pertaining to a conversation between ABRAHAM BROTHMAN, a subject in the GREGORY case, and two of his employees concerning a technical project which BROTHMAN was working upon at that time. The project referred to dealt with the designing of a plant supposedly to manufacture DDT, but it appeared that in reality the plant was to manufacture TNT. (u)

On July 28, 1946, a highly confidential source furnished this office with information contained in the offices of Abraham Brothman & Associates, 114 East 32nd Street, New York City. Photographs of the material were taken and are being transmitted herewith. The photographs are believed to be of three distinct projects BROTHMAN is working upon and are described as follows:

DEFERRED RECORDING

The first group are entitled, "PROGRESS REPORT ON PALESTINE JOB" It is to be noted that on page 1 of the photographs a statement is made that the BROTHMAN organization undertook to design a plant for the manufacture of TNT for the client in December of 1945. However, the client is not mentioned. On page 3, line 3, of this same group, a statement is made as follows: "Other plants were required to be operated jointly with the above mentioned ones to act as plausible shields for the operation of the original plants. Thus it was decided to add a DDT plant and an Alkyd Resin plant to the program."

RECORDED
INDEXED
65-5640-1516
SEP 5 1946

The photographs in group 2 may possibly have a direct connection with the Palestine job referred to hereinbefore as group 1. However, the plans consist of formulas and equations, plus the cost of the plant, and

FDO'B:RAA
65-14603

DECLASSIFIED BY SP-5 RJH/mr
ON 4-22-83
3042 purs to 6/2/88

FDO'B:RAA
65-14603

New York, N. Y.
August 8, 1946

were set forth on stationery of the firm of A. Brothman & Associates.

The third group of photographs are of a project entitled, "PROPOSAL FOR CHLORAL AND DDT PLANTS FOR STE. d'ELECTRO CRIMIE & d'ELECTRO METALLURGIE et des ACIERIES ELECTRIQUES d'UGINE." It is possible that this project is for a French organization or the French Government inasmuch as BROTHMAN has previously stated that he was working on a project for the "French."

A photograph of an unsigned letter dated July 11, 1946, which had previously been destroyed and pieced together, was obtained. This letter was directed to the Government Purchasing Commission of the Soviet Union in the U.S.A., 210 Madison Avenue, New York, New York. The letter is directed to the attention of Mr. V. Tverianovich, re Guarantee of Plant Performance. This letter indicates that a preliminary proposal was submitted to the Soviet Purchasing Commission on July 2, 1946, and sets forth the statement that the final payment of $65,000, which represented roughly 10% of the total engineering service fee, was to be made conditional upon each of the plants completing thirty days' successive plant operation. It is possible that all of the plants being designed by BROTHMAN are being designed for the Soviet Purchasing Commission inasmuch as the statement referring to "each of the plants" is made.

The material submitted herewith is of a highly technical nature and it is believed that the FBI Laboratory may be able to determine whether or not the plants are being designed as a cover for the manufacture of some other product than that which appears in the plans. The project entitled "PROGRESS REPORT ON PALESTINE JOB" contains information pertaining to the resources and materials that are available in Palestine and what products must be substituted for those not available in Palestine.

After evaluation by the FBI Laboratory, it is requested that this office be advised whether the plans as set forth are actually designed for the purpose stated or for the manufacture of some other product not stated within the plans.

Very truly yours,

E. E. Conroy

E. E. CONROY,
SAC

Enc. 4

REPORT 94
of the

FBI LABORATORY

FEDERAL BUREAU OF INVESTIGATION
WASHINGTON D. C.

To: SAC New York

October 14, 1946

Following is the report of the FBI Laboratory giving the results of examinations conducted on evidence received from your office.

John Edgar Hoover, Director

Re: Gregory; Espionage - R
(Refer 5 IS)

YOUR FILE NO.
FBI FILE NO. 65-14603
LAB. NO. 65-56402 FC-18296 PA

Examination requested by: Addressee

Reference: Letter of 8/8/46

Examination requested: Miscellaneous

Specimens: Q7, Envelope containing three separate groups of photographs.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 4-22-83 BY SP-5 RSB/MR
RECORDED 6/21/88 30 JUN 1947

RESULTS OF EXAMINATIONS:

In referring to the manufacturing processes which will be outlined below certain technical terms are used which, if clarified here, will simplify reading of the report. These processes are for the manufacture of TNT (high explosive), DDT (an insecticide), nitroglycerine (a high explosive), nitrocellulose (smokeless powder), ballistite (a mixture of nitroglycerine and nitrocellulose) and PETN (a high explosive).

Each group of photographs will be dealt with separately and referred to by group number corresponding to the group number assigned by your letter, that is, Group 1, Group 2, and Group 3.

(Cont'd next page)

2 New York
1 Laboratory

RMZ:AWK

Mr. Tolson
Mr. E. A. Tamm
Mr. Clegg
Mr. Coffey
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Mohr
Mr. Carson
Mr. Hendon
Mumford
Jones
Quinn Tamm
Nease
Sandy

65 OCT 24 1946

GROUP 1.

In this group there is a report headed "Progress Report on Palestine". This report goes into detail describing the proposed set-up for a plant or plants to manufacture TNT which will also be suitable for the manufacture of PETN, DDT, nitrocellulose, nitroglycerine, a blending unit for nitroglycerine and nitrocellulose into ballistite, nitric acid production, lacquer and alkyd resins.

On Page 3 of this report is a [illegible] which indicates that erection of a TNT plant was originally planned, but in order to shield this plant's operation, other plants were to be operated jointly with the TNT plant. A DDT and alkyd resin plant were then added.

Further in this report, on the page headed "Insert A-5", mention was made of obtaining a new process for the purification of PETN crystals which replaces the old method of purification of the product with acetone. It was indicated in the report that acetone was difficult to obtain in Palestine. The new method, they indicate, not only gave a purer product but added the advantage that it eliminated the necessity of a distillation column "for which there is no need in a DDT plant and would require explanati

These remarks on page 3 and insert A-5, as outlined above, indicate to the examiner that plans called for the erection of a TNT plant, the equipment for which plant could also be used in the manufacture of DDT, alkyd resin, PETN, nitroglycerine or nitrocellulose. The indication is that the DDT plant was to act as a blind for the manufacture of TNT.

Included also in group 3 are photographs of [illegible] cards containing notes and rough sketches dealing with the manufacture of hydrogen cyanide (HCN). These were notes which were later incorporated into a ten-page report by one "RG" on the manufacture of hydrogen cyanide which will be referred to later in Group 2.

In this Group also (Group 1) were two flow sheets, one for a DDT and one for a TNT process. The equipment mentioned in these flow sheets are in code probably taken from a drawing in which each piece of equipment has been designated a code number. It is noted that the same code number reference appears in both processes possibly indicating the use of the same equipment for the DDT process and the TNT process. This further bears out the contention that the same plant may be used for the manufacture of both DDT and TNT.

In addition to the reports mentioned above there were included in this group, heat formulae which apparently have no bearing on any of the processes above mentioned.

GROUP 2.

This group consisted of itemized cost lists on A. Brothman and Associates stationery for a DDT plant. The listing was for instruments, pumps and equipment. Also included was a cost list for valves for an alkyd resin plant. No reference was made as to where the articles were to be used.

In this group was a ten-page report and bibliography on the manufacture of hydrogen cyanide (HCN). This report was written by one "RF" and indicated that it was a job for "CAARC". This report deals with the review of literature and patents on the manufacture of hydrogen cyanide. It appears to be authentic from a chemical standpoint. In the manufacture of DDT, TNT, and PETN hydrogen cyanide is not required. You will recall that Group 1 contained notes on the manufacture of hydrogen cyanide. It was these notes which were incorporated in this ten-page report by "RF" on the manufacture of hydrogen cyanide. No connection was found between the report on hydrogen cyanide and the Palestine job.

Another report apparently written by the same "RF" dealt with the manufacture of acetone. This report was written under the job description "CH". The report is authentic from a chemical standpoint. Acetone is used as a purifying agent in the manufacture of PETN.

Two additional papers in this group consisted of one two-page report on "VF molding powder" and a one-page paper on "methyl methacrylate". From a chemical standpoint these appear to be authentic. No reference is made as to where any of these processes are to be put in use or for what purpose. Neither of them is a requirement in the manufacture of DDT, TNT or PETN.

GROUP 3.

This group consists principally of data on a plant set up for the manufacture of DDT using chloral to be manufactured by the same plant. The plant in question is apparently to be erected in France, the data being furnished to one Dr. Edgar Schwarz, Ste. d'Electro Chimi, Paris, France. These data were made by A. Brothman and Associates. For your information, chloral usually in the form of a hydrate (chloral hydrate), is used in the manufacture of DDT. Nothing was found in this group which appeared to be unauthentic. No reference was found anywhere in this group to indicate that a TNT plant was being erected in Palestine.

In the letter to the Government Purchasing Commission of Russia in the United States which appeared to be a guarantee of plant performance, no reference was made to any particular plant.

The letters from A. Brothman and Associates to Dr. Edgar Schwarz on the proposed plant set-up for chloral and DDT are authentic for the manufacture of DDT and chloral from a chemical standpoint.

The photographs are being returned to your office attached hereto.

Enclosures
PC-18296

MAT:JAC
100-17493

SECRET

September 6, 1946

NEW YORK FROM WASHINGTON FIELD 6 5pm

SAC URGENT

GREGORY, ESPIONAGE R.

[redacted]

b1

SEP 23 1946

SECRET

93

SECRET

PAGE TWO

[redacted] (S) b1

ON SEPTEMBER FOUR DOROTHY KAPLAN AND AMELIA PERAZICH ARRANGED For Peraziches TO VISIT KAPLANS FOR DINNER FOLLOWING EVENING. ON SEPTEMBER FOUR ONE VIC, POSSIBLY VICTOR PERLO, CONTACTED MAGDOFF DISCUSSING DRIVING TO NEW YORK WITH MAGDOFF WHO INDICATED HE WOULD NOT GO UNLESS STEERING WHEEL COULD BE FIXED. ON SEPTEMBER FIVE DORIS FLEMM INFORMED ABEL FLEMM THAT DR. BARSKY, NYC, HAD BEEN ENDEAVORING TO CONTACT HIM. ON SEPTEMBER FIVE ULLMANN TOLD HELEN SILVERMASTER HE HAD TALKED WITH HENRIETTA, BELIEVED HENRIETTA KLOTZ, WHO IS COMING TO WASHINGTON SATURDAY AND WILL STAY AT STATLER HOTEL. HE STATED SHE WOULD LIKE TO SPEND SOMETIME WITH HELEN BUT WOULD BE DIFFICULT TO GET AWAY FROM MORGENTHAU WHO IS BUSY. ULLMANN MENTIONED BILL BEING HERE AND HAVING HORSES, ETC., POSSIBLY REFERRING TO SUBJECT WILLIAM TAYLOR. HELEN INDICATED THEY WOULD CLOSE HOUSE AND GO TO BEACH THIS WEEKEND. (S) 4

BUREAU ADVISED.

HOTTEL

BUREAU BY MESSENGER

SECRET SECRET

90

MAT:JAC
100-17493

SECRET

September 12, 1946

NEW YORK FROM WASHINGTON FIELD 12 5p

SAC URGENT

GREGORY, ESPIONAGE R.

[redacted]

(S)

[redacted]

Classified by 5281 STP/JW
Declassify on: OADR
X-22-53 3042 PWJ/DB
3/31/88

[redacted]

62-56402-1518

b1

[redacted]

(S)(C)

SEP 27 1946

SECRET

SECRET

[redacted]

(C)

ON SEPTEMBER ELEVEN MARY JANE KEENEY CONTACTED ONE SARAH, POSSIBLY SARAH CABOT, ADVISING SHE JUST RETURNED FROM TWO WEEKS IN NEW YORK. SHE INDICATED THE RADIO STATION, REFERRING TO METROPOLITAN BROADCASTING COMPANY, WILL PROBABLY GET UNDER WAY ABOUT DECEMBER ONE AND SHE WILL JOIN STAFF IN NOVEMBER. ALSO STATED PHILIP KEENEY WILL RETURN HOME ON FURLOUGH AFTER NOVEMBER ONE. ON SEPTEMBER ELEVEN CONFIDENTIAL SOURCE ADVISED ERNA ROSENBERG MENTIONED HAVING THE LUNNINGS OUT LAST SATURDAY NIGHT. BUREAU ADVISED. (U)

HOTTEL

BY BUREAU MESSENGER

SECRET

Office Memorandum · UNITED STATES GOVERNMENT

TO : Mr. D. M. Ladd

FROM : W. C. Strickl

SUBJECT: VICTOR PERLO

DATE: 9-6-46

Mr. Tolson
Mr. E. A. Tam
Mr. Clegg
Mr. Coffey
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Egan
Mr. Hendon
Mr. Pennington
Mr. Quinn
Tele. Room
Mr. Nease
Miss Beahm
Miss Gandy

Mr. Lawson Moyer, who is connected with the Personnel Investigations Section of the Treasury Department, has requested the Bureau through Supervisor Frank Griffee of the Liaison Section to make available to the Treasury Department information contained in the Bureau's files concerning Victor Perlo who, you will recall, is a principal subject in the Gregory case.

A complete summary concerning the Gregory case has not previously been made available to the Secretary of the Treasury and in view of this it is not deemed advisable at this time to furnish the Treasury Department in detail the full activities of Perlo in the Gregory case. Therefore, there is attached hereto a blind memorandum setting out in a brief summary the information contained in the Bureau's files on Perlo with a scant reference to his activities in the Gregory case.

ACTION:

It is suggested that a copy of the attached memorandum be made available to Mr. Moyer at the Treasury Department through the Liaison Section.

HAND DELIVERED BY MESSENGER

Attachment

1 ENCL

FLJ:WMJ

RECORDED

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SEP 20 1946

15-6402-1519

F B I

SEP 18 1946

65-56402-1519 (2183)

Summ to Treasury Sept. 6, 1946

Re - Victor Perlo

Vettle (1738)

This was forwarded from Vettle.

6/24/88 304 Pertes

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 4-22-83 BY SP-5 RTB/MN

89.

September 6, 1946

VICTOR PERLO

Victor Perlo, alias Nathan Perlow, was reported to be a member of a Communist underground government group operating in Washington, D. C., as early as 1933. This group continued its activities until approximately 1937. Information obtained from various government departments by the individual members was eventually turned over to the Communist Party in New York City. When Perlo was mentioned as a part of this early group, he was referred to as Nathan Perlow, employed as an economist connected with the Brookings Institute in Washington, D. C.

It has been reported from another source regarded as entirely reliable that Victor Perlo continued his activities as a part of a Communist government underground group engaged in espionage activities on behalf of the Soviet Government from 1941 until 1944 in Washington, D. C. In this organization Victor Perlo was the head of an individual group known as the Perlo Group.

A highly confidential source of information has determined that in 1935 an automobile license listed in the name of Victor Perlo, 1320 Sunderland Place, Washington, D. C., was noted in connection with Communist disturbances in North Dakota. It has also been determined through confidential sources that Victor Perlo was listed as a member of the Capitol City Forum, which organization has been reported to be a Communist front organization. This same source listed Victor Perlo as a Socialist Party contact and a subscriber to "The Socialist," an organ of the Socialist Party. One Victor Perlo was also listed as one of the individuals attending the 1940 Socialist Party Convention and also as having made contributions to the Socialist Party in the District of Columbia area. The identity of this individual has not definitely been determined.

Victor Perlo is known to be a contact of numerous individuals reported to be Communist Party members and suspected of being engaged in Soviet espionage activities.

(62-56402-573)

Tolson
Mr. A. Tamm
Clegg
Glavin
Ladd
Nichols
Rosen
Tracy
Carson
Egan
Gurnea
Harbo
Hendon
Pennington
Quinn Tamm
Mease
Sandy

FLJ:WMJ:EW

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 4-22-93 BY SP-3 [illegible] 6/24/88

Enclosure

74

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : MR. LADD

FROM : E. G. FITCH

DATE: September 11, 1946

SUBJECT: GREGORY; ESPIONAGE - R
(WILLIAM LUDWIG ULLMANN)

Reference is made to my memorandum to you of June 14, 1946, which indicated that four individuals, namely S. L. Klepper, Walter W. Ostrow, Captain H. Zap and Irving Roth, were in correspondence with Ullmann, and stated that the matter had been discussed with Colonel L. R. Forney of the Liaison Section by Special Agent S. W. Reynolds, at which time Colonel Forney advised he would contact the Theater to obtain any information of value and assistance to the Bureau. (U)

The matter has been followed with Colonel Forney, who advised he has not received any information from the Theater as of this date, but he stated he would recontact the Theater and follow the matter closely, in order that the desired information may be obtained.

Mr. Reynolds will follow this request with Colonel Forney, and you will be advised as to all information received.

RECOMMENDATION:

It is recommended that this be forwarded to the Internal Security Section for information purposes.

SWR:mk

RECORDED & INDEXED

56 SEP 25 1946

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 4-22-83 BY SP-5 [illegible]
6/24/88

UNITED STATES GOVERNMENT

FROM : GUY HOTTEL, SAC, WASHINGTON FIELD

DATE: September 3, 1946

SUBJECT: GREGORY
INTERNAL SECURITY - R
DAVID R. WAHL

CONFIDENTIAL

Reference is made to the above captioned individual presently under investigation by this office in connection with the above entitled case.

DAVID R. WAHL resides at Number 3 Lexington Street, Kensington, Maryland, telephone SHepherd 2959, and is the head of the American Jewish Conference of Washington, D. C., with offices at 1706 G Street, NW., Washington, D. C., telephone REpublic 0883. There follows an outline of pertinent facts regarding DAVID R. WAHL.

On July 22, 1944, after investigation by the Civil Service Commission WAHL was ordered removed from Civil Service rolls, but was retained after the Foreign Economic Administration, which employed WAHL, instituted an appeal on his behalf. WAHL'S name appeared on the DIES list as a member of the Washington Committee for Democratic Action and on the list for American Peace Mobilization. WAHL was formerly President of the United Federal Workers of America, local, in the Library of Congress.

According to a confidential informant known to the writer, who had worked with WAHL and was also a Communist located in Washington, WAHL was a RussianAgent in 1941 and attempted to obtain information regarding American ships, ship sailings, etc. during the Russian-German Pact. WAHL stated to the informant that he would turn the information over to the Communist Party Headquarters in New York City for the benefit of Russia.

[redacted] (CC)

(CC) [redacted]

b1

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

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Classified by 3 0-5 RJH/mm
Declassify on: OADR

RECORDED 65

INDEXED 10

Classified by 3 0-5 RJH/mm
Declassify on: OADR

CONFIDENTIAL

RE: [redacted]
INTERNAL SECURITY - R
DAVID R. WAHL

DIRECTOR, FBI

CONFIDENTIAL

[redacted]

On August 26, 1946, WAHL had lunch and dinner with MAX LOWENTHAL and then went to the ATC Airport, where LOWENTHAL boarded the plane for Berlin, in the capacity of Advisor on Problems of Internal Restitution, Sequestration and Disposal of Jewish Property. In the group that gave LOWENTHAL a send-off were EDWARD COOPER, WAHL and HERBERT A. FIERST.

In the Department of State Bulletin dated August 4, 1946, FIERST and HAROLD GLASSER are included in the list of delegates of "The United States Delegation to the Fifth Session of the Council of UNRRA," scheduled to convene in Geneva, Switzerland, August 5, 1946. FIERST was listed as Special Assistant to the Assistant Secretary of State. It was confidentially ascertained that in addition to [redacted]

KLF:CNS
100-17493

CONFIDENTIAL

RECORDED EX-9

65-56402-1524

September 16, 1946

PERSONAL AND CONFIDENTIAL

CONFIDENTIAL

MEMORANDUM FOR THE ATTORNEY GENERAL

RE: DAVID RALPH WAHL

In connection with the current investigation concerning known and suspected Soviet espionage agents in the United States, it has been learned that David Ralph Wahl who is presently the Washington representative of the American Jewish Conference with offices at 1706 G Street, N. W., Washington, D. C., and who resides at 3 Lexington Street, Kensington, Maryland, is suspected of being engaged in Soviet espionage activities.

Wahl is a known contact of numerous subjects being investigated in connection with the Gregory Case about which information has been previously made available to you, and as early as 1941 he was reliably reported to be a "master spy" for the Soviet Government while employed by the United States Government in Washington, D. C.

[redacted]

(C)

Respectfully,

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

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DIRECTOR

T. OF JUSTI...

John Edgar Hoover
Director

4-22-03

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SEP 28 1946

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Federal Bureau of Investigation
United States Department of Justice
Washington Field Office
September 17, 1946

57432

Director, FBI

PERSONAL AND CONFIDENTIAL
ATTENTION: FBI LABORATORY

RE: GREGORY
ESPIONAGE - R
(FRED WARNER NEAL)

3042 PWT/JS 6/24/88
DECLASSIFIED BY SP-5 RJH/lmk
ON 4-22-83

Dear Sir:

Enclosed herewith is a photostatic copy of a letter dated March 15, 1934, addressed to Congressman W. FRANK JAMES and signed by WARNER NEAL. Also enclosed is a photostatic copy of the second half of an application blank which is signed by the applicant, FRED WARNER NEAL. No other specimens of the handwriting of this individual are available.

It is requested that a comparison of these two ~~DEFERRED RECORDING~~ signatures be made in an effort to identify them as having been written by the same person. ~~AND STOP DISK~~

Very truly yours,

RECORDED
INDEXED
62-54402-1522
FEB 1946

GUY HOTTEL
SAC

ENCL (2)

Enclosures (2)

FOR VICTORY BUY UNITED STATES DEFENSE BONDS AND STAMPS

63 WHER
100-17493

CHECKED LAB. FILES

EX-29

REPORT of the FBI LABORATORY

FEDERAL BUREAU OF INVESTIGATION
WASHINGTON D. C.

To: SAC, Washington

September 23, 1946

There follows the report of the FBI Laboratory on the examination of evidence received from your office on September 18, 1946.

J. Edgar Hoover

John Edgar Hoover, Director

Re: GREGORY
ESPIONAGE - R
(FRED WARNER NEAL)

Examination requested by:

Reference: Washington

YOUR FILE NO.
FBI FILE NO. 100-17493
LAB. NO. D-57432 BE

RECORDED ~~65-57402-1522~~

Examination requested: Letter - September 17, 1946 EX-14 65-56402-1522

Specimens: Document

6/24/88 304 pvt/JS
ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 4-22-83 BY SP-4 Tkr

Qc5. One photostatic copy of two page typewritten letter on letterhead stationery "FRED WARNER NEAL, NORTHVILLE, MICH." dated "March 15, 1934" addressed to "Congressman W. Frank James, 3125 Adams Mill Road, Washington, D.C." and signed "Warner Neal".

Qc6. Photostatic copy of one page of application blank giving education and employment experience and signed "Fred Warner Neal".

RESULT OF EXAMINATION:

COMMUNICATIONS SECTION

SEP 24 1946 P.M.

No conclusion was reached whether the "Warner Neal" signature on specimen Qc5 was written by the individual who prepared the "Fred Warner Neal" signature on specimen Qc6 because of variations which could not be accounted for on the basis of the handwriting available for comparison.

The submitted evidence, specimens Qc5 and Qc6, is retained in the files of the Laboratory.

ENCL. BEHIND FILE

2 - Washington
1 - Laboratory

MLS:cek 56 OCT 2 1946

ENCLOSURE

65-56402-1522

To be argued by
JOHN McKIM MINTON

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

against

ABRAHAM BROTHMAN and MIRIAM MOSKOWITZ,
Defendants-Appellants.

BRIEF FOR DEFENDANT-APPELLANT, ABRAHAM BROTHMAN

JOHN McKIM MINTON,
Attorney for the Defendant,
Abraham Brothman.

JOHN McKIM MINTON,
WILLIAM F. McNULTY,
Of Counsel.

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

against

ABRAHAM BROTHMAN and MIRIAM MOSKOWITZ,

Defendants-Appellants.

BRIEF FOR DEFENDANT-APPELLANT, ABRAHAM BROTHMAN

Statement

This is an appeal from a judgment of conviction entered in the United States District Court for the Southern District of New York on November 28th, 1950, after the trial before Hon. Irving R. Kanfman and a jury of an indictment charging (1) both defendants herein with the crime of conspiracy under Section 88 of Title 18 of the United States Code (1946 Ed.) and (2) the defendant Brothman, alone, with the substantive crime of obstructing justice in violation of Section 241 of the same Title.

The defendant Brothman was convicted under both counts of the indictment (S. M. 1158). Under the first or conspiracy count he was sentenced to two years in prison and fined $10,000.00 and under the second or substantive count to five years in prison and fined $5,000.00, the prison sentences to run consecutively (S. M. 1175).

The defendant Moskowitz, whose appeal is being separately prosecuted, was also convicted under the conspiracy count (S. M. 1158) and sentenced to two years in prison and fined $10,000.00 (S. M. 1176).

The Background of the Indictment

The indictment herein was found on July 29th, 1950, or on "the very eve of the running of the statute of limitations" (S. M. 7). It is the outgrowth of certain testimony given by the defendant Brothman and one Harry Gold (who was named as a co-conspirator but not as a defendant in the first count of the indictment) before the United States Grand Jury for the Southern District of New York, which was convened on June 16th, 1947, for the purpose of investigating possible violations of the Espionage Laws of the United States and other Federal criminal statutes (S. M. 233, 1125).

At that time Brothman, a married man with two children (S. M. 255), who had graduated from the DeWitt Clinton High School in New York City and from Columbia University with a degree of Bachelor of Science in Chemistry in 1933 (S. M. 252), was the head of A. Brothman & Associates, a firm of consulting chemists and engineers, which he had organized on August 15th, 1944 (S. M. 251-252). The executive offices of this company were in the Chatham-Phoenix Building on 41st Street, Long Island City, Queens County (S. M. 169-170, 251), and its chemical laboratory was located at Elmhurst, also in Queens County (S. M. 188, 191). The defendant Moskowitz was the secretary and treasurer of this firm and the person in charge of its executive offices in Long Island City (S. M. 630) and Harry Gold was the chemist in charge of its chemical laboratory at Elmhurst (S. M. 450).

Gold, a biochemist (S. M. 443) with degrees from the Drexel Institute of Technology in Philadelphia and Xavier University in Cincinnati (S. M. 448), had joined the

Brothman organization in May, 1946, and remained in its employ until June, 1948 (S. M. 450). Prior to May, 1946, he had been employed for a period of approximately 18 years, with time off for study, at the chemical laboratory of the Distillery Division of the Pennsylvania Sugar Company in Philadelphia (S. M. 449). In February, 1946, however, this Division of the Pennsylvania Sugar Company was closed and Gold was "laid off *permanently*" (S. M. 450). After leaving A. Brothman & Associates in June, 1948, Gold returned to Philadelphia, which had been his home since 1915 (S. M. 446), and secured employment at the "heart station" of the Philadelphia General Hospital as a member of a staff of physicians, chemists and technicians who were engaged in cardiac research (S. M. 450-451).

Prior to organizing A. Brothman & Associates on August 15th, 1944, Brothman had been employed for a little over two years by the Chemurgy Designing Corporation which was located in the Graybar Building in the Borough of Manhattan (S. M. 252). Before that, or from 1938 until 1942, he had operated a small company of his own known as the Republic Chemical Machinery Company which maintained offices at 154 Nassau Street and then on 42nd Street and, finally, at 30 Church Street, in the Borough of Manhattan (S. M. 253). This company was associated with the Hendricks Manufacturing Company of 30 Church Street, for which Brothman developed and designed chemical equipment of various kinds on a percentage basis (S. M. 257, 948-950). Prior to 1938 he had worked for the Anshacher Siegle Company, a concern engaged in the manufacture of pigments for paints, cosmetics and lithographic inks (S. M. 253-254).

On July 22nd, 1947, Brothman was called before the Grand Jury which had been convened on June 16th, 1947, and questioned about his prior relations with the now notorious Communist underground agent, Jacob Golos, and

the latter's equally notorious former courier, Elizabeth Bentley, each of whom he admittedly had met many years ago and to whom he had given certain drawings of chemical industrial processes and other data pertaining thereto during the year 1940 and the early part of 1941 (S. M. 256-265, 272-273, 280-283, 289-295, 307, 359-375). In addition thereto, he was interrogated about his prior relations with Harry Gold, whom he had met for the first time during the latter part of 1941 and to whom he thereafter gave additional drawings and data of this same general nature during the course of the next year or two, for delivery to Golos (290-291, 321-349, 462-478, 500-513, 519-624).

In response to this interrogation Brothman told the Grand Jury that when he met Golos, whom he knew only as "John Garlis or Garlick" or "something like that" (S. M. 256), during the early part of 1940, the latter represented himself to be a person who had important connections with the Russian Trade Commission in the United States and could help him to obtain business from Russian sources (S. M. 256-265). For his services in this respect it was understood that he would be paid the usual finder's commission of 10% (S. M. 290). Brothman testified that he had previously tried to interest the Amtorg Trading Corporation in some new chemical industrial processes—particularly the one which he had developed for mixing "liquids and liquids and gases and liquids at a point of extreme turbulence, so as to accomplish an immediate uniform distribution of the added fluid to the circulated fluid at that point" (S. M. 257)—but that he "never got farther than the reception desk downstairs" (S. M. 295) and that even after he met Golos he continued his efforts along this line but without success (S. M. 294-295).

It was through Golos that Brothman later met Elizabeth Bentley, whom he knew only as "Helen" and who was represented to be Golos' "secretary", around the middle

of 1940 (S. M. 272), and later Harry Gold, whom he first met in the fall of 1941 (S. M. 283-284). Brothman testified that when the arrangement was made for him to meet Gold he was told that the latter was "a chemist who could work with me" when he received Russian orders for the industrial processes which he was at that time trying to exploit through Golos (S. M. 283-284, 290-291, 309). A close relationship thereafter developed between Brothman and Gold and, before Gold entered the employ of Brothman's firm in May, 1946 (S. M. 450), he did considerable "extracurricular work" for Brothman "on his own time" at the laboratory of the Pennsylvania Sugar Company in Philadelphia, where he was then employed, which had more complete facilities than Brothman's own laboratory had at that time (S. M. 308-309).

In his testimony before the Grand Jury Brothman emphatically denied that he was a member of the Communist Party, except that he admitted that years ago he had belonged to the Young Communist League while he was a student at Columbia (S. M. 270-272). He also denied that he had ever been a member of any organization "listed as a Communist front organization", except that he had once been a member of the Committee of Artists and Scientists, which he thought might possibly have been so listed but he wasn't sure about this (S. M. 270).

On July 31st, 1947, or nine days after Brothman had testified, Gold appeared before the same Grand Jury and testified (S. M. 239-240). In the main his interrogation was generally along the same lines as that of Brothman on July 22nd, 1947 (S. M. 314-349).

On May 29th, 1947, or prior to their respective appearances before the Grand Jury, Brothman and Gold had each been separately interviewed by Special Agent Donald E. Shannon and Special Agent Francis D. O'Brien of the Federal Bureau of Investigation—Brothman at the executive offices of A. Brothman & Associates in the Chatham-

Phoenix Building on 41st Street in Long Island City, Queens County, and Gold at the chemical laboratory of that company, where he was then employed as the chemist in charge (S. M. 450), at Elmhurst, Queens County (S. M. 169-183, 187-198). At the conclusion of each of these separately conducted interviews the substance thereof, which in general is substantially the same as the testimony of Brothman and Gold before the Grand Jury, was reduced to writing by Special Agent Shannon and signed by the person interviewed (Govt. Exhs. 4 & 6; S. M. 180-184, 199-201).

It is the theory of the indictment that when they testified before the Grand Jury on July 22nd and July 31st, 1947, respectively, Brothman and Gold both deliberately misrepresented their relations and associations with each other during the period that Brothman was delivering these drawings and other chemical data to Gold, as well as their respective relations with Gold and Elizabeth Bentley prior thereto, and that this was done pursuant to a continuing conspiracy previously entered into by Brothman, Gold and the defendant Moskowitz in the Southern District of New York on or about May 28th, 1947, and that, in addition thereto, Brothman corruptly endeavored to influence and did in fact influence the testimony of Gold before the Grand Jury on July 31st, 1947, in violation of Section 241 of Title 18 of the 1946 Edition of the United States Code (S. M. 1074-1075).

The Indictment

The first or conspiracy count charges (S. M. 1116-1117):

"1. That from on or about the 28th day of May, 1947, and continuing up to and including the 12th day of June, 1950, in the Southern District of New York, Abraham Brothman and Miriam Moskowitz, the defendants herein, and Harry Gold, a co-conspirator but

not a defendant herein, and divers other persons to the grand jury unknown, did unlawfully, wilfully, knowingly and corruptly combine, conspire, confederate and agree together, and with each other, to defraud the United States of America in the exercise of its governmental function of administering and enforcing the criminal laws of the United States of America, and to influence, obstruct and impede the due administration of justice therein, in violation of Title 18, United States Code, Section 241 (1946 ed.).

2. That, as the said defendants well knew, during this conspiracy, a grand jury of the United States, duly impaneled in and for the United States District Court for the Southern District of New York, was conducting an investigation of possible violations of the espionage and other federal criminal statutes.

3. That it was a part of said conspiracy that the defendant, Abraham Brothman, and Harry Gold, a co-conspirator, would agree upon fictitious explanations of their associations with each other and divers other persons.

4. That it was further a part of said conspiracy that when the defendant, Abraham Brothman, appeared before the aforesaid grand jury, he would give false, fictitious, fraudulent and manufactured information concerning the aforementioned associations.

5. That it was further a part of said conspiracy that the defendant, Abraham Brothman, would inform Harry Gold, a co-conspirator, of the substance of his testimony before said grand jury, for the purpose of enabling the said Harry Gold to conform his testimony thereto.

That it was further a part of said conspiracy that when Harry Gold appeared before the aforesaid grand

jury, he would give false, fictitious, fraudulent and manufactured information concerning the aforementioned associations, which would conform with the information theretofore given to said grand jury by the defendant, Abraham Brothman."

The second or substantive count charges (S. M. 1118-1119):

"1. That on or about the 31st day of July, 1947, at the Southern District of New York, Abraham Brothman, the defendant herein, knowingly, wilfully and corruptly endeavored to influence, intimidate and impede Harry Gold, a witness before a grand jury sitting in and for the Southern District of New York, and did knowingly, wilfully and corruptly influence, obstruct, impede and endeavor to influence, obstruct and impede, the due administration of justice therein, that is to say:

2. That the said grand jury was at that time and place aforesaid, conducting an investigation entitled, "United States v. John Doe, pertaining to possible violation of espionage laws of the United States and any other federal criminal statutes.

3. That the defendant, Abraham Brothman, at the time and place aforesaid, knew that the said Harry Gold had received a subpoena requiring the said Harry Gold to appear before the said grand jury on July 31, 1947, to testify as a witness.

4. That the defendant, Abraham Brothman, at the time and place aforesaid, wilfully, knowingly and corruptly influenced, intimidated and impeded the said Harry Gold by urging, advising and persuading him to give false testimony before the said grand jury."

In proving these offenses the Government relied chiefly on the testimony of Harry Gold (S. M. 443-478, 500-924),

who, as already noted, was named a conspirator but not a defendant under the first count of the indictment (S. M. 1116). Although Elizabeth Bentley also was a Government witness, her testimony as to her relations with Brothman (S. M. 351-441, 478-500) was necessarily confined to the brief period of time between the spring of 1940, when she first met him (S. M. 359) and the early fall of 1941, which is the last time that she ever saw this defendant (S. M. 369-370). This was upwards of six years prior to the formation of the alleged conspiracy charged in the first count of the indictment (S. M. 1116). This admitted former Communist courier and mistress of Golos (S. M. 396), concededly, had never met Gold and had not even heard of him at least as late as June 1947 (S. M. 383-388). Furthermore, she knew nothing whatever about the defendant, Miriam Moskowitz, outside of what she had read in the newspapers (S. M. 434).

At this point it should be noted that there was no claim at the trial that Brothman was ever engaged in espionage (S. M. 1129 or that any of the drawings and other data which he delivered to Golos and Elizabeth Bentley during 1940 and the early part of 1941 or to Gold after the fall of 1941 related to processes that were secret or "classified" (S. M. 797, 1024, 1129-1130). As a matter of fact the defense was prepared to establish at the trial that all of this material pertained strictly to chemical industrial processes, the details of which had already appeared in various reports or in articles published in widely read magazines on chemistry and engineering. However, after a very considerable amount of evidence along this line had been adduced (S. M. 758-797, 1006-1021), the Government vigorously pressed its objection that this proof had "no conceivable materiality to any issue in the case" (S. M. 1023). At this point the Court abruptly curtailed any further proof of this character with the comment that "I think that you are protected not only on the record but I believe that

what you would have wanted or what you would have accomplished by the introduction of those particular articles, probably seven in number, you have already accomplished by the state of the record today" (S. M. 1027-1028).

Furthermore, there was no claim that any of this data belonged to the United States or came from the files of any governmental agency. As the Court will see when it examines the stenographic transcript of the trial, several of the drawings introduced into evidence by the Government came from the files of the Hendricks Manufacturing Company, for which Brothman was developing chemical industrial processes on a percentage basis from 1938 until 1942 (S. M. 257, 948-950). Benjamin G. Garin, the New York sales manager of this company (S. M. 948), testified that there was nothing secret about any of the processes depicted in these drawings, which were based on the ideas of Brothman himself and that "if he wanted a copy, he was privileged to make one" (S. M. 951-956).

Finally, in submitting the case to the jury, the Court itself took great pains to admonish the jury as follows (S. M. 1129-1130):

> "The next point I want you to listen to very carefully is that there has been much testimony as to the espionage activities of Harry Gold and Elizabeth Bentley, and as to the transmittal of chemical engineering plans by Abraham Brothman to Harry Gold and Elizabeth Bentley.
>
> *There is no claim made in this indictment that Abraham Brothman engaged in espionage. It is not claimed here that the material transmitted was of an illegal nature or that it was secret or that it could not have been found in textbooks or magazines on engineering and chemistry.*" (Italics ours.)

We mention this only because on his direct examination Harry Gold, the Government's chief witness, admitted

that on July 20th, 1950, or some two years after he had left the employ of A. Brothman & Associates (S. M. 450), he had pleaded guilty before the District Court in Philadelphia to the crime of espionage in connection with the transmittal of "information on atomic energy to the Soviet Union" and that even as he testified he was under indictment here in the Southern District of New York for "conspiracy to commit espionage with a David Greenglass and certain other persons" (S. M. 444). While these treasonable activities on the part of Gold undoubtedly prejudiced the jury against Brothman, whose associations with Gold had been rather close from the time of their first meeting in the fall of 1941 (S. M. 470) until Gold left the employ of A. Brothman & Associates in June, 1948 (S. M. 450), they obviously had no bearing whatever on any of the issues raised by the indictment herein, and certainly have no bearing on the single issue presented by this appeal.

The Single Issue Raised By the Defendant Brothman

On this appeal the defendant Brothman raises but one issue, and that is a very basic constitutional and perhaps jurisdictional one which affects only his conviction under the second or substantive count of the indictment.

As we shall shortly demonstrate, all of the proof offered by the Government in support of this count shows on its very face that, if the offense charged therein was in fact committed, every essential element thereof was committed in the County of Queens in the Eastern District of New York. This being so, it is respectfully submitted that the motion of the defendant Brothman for a dismissal or for the direction of a verdict of acquittal on the second count, made at the close of the Government's

case (S. M. 944-945) and renewed at the close of all the evidence (S. M. 1028), should have been granted.

Inasmuch as this is the only issue raised by the defendant Brothman, we shall confine our discussion of the evidence herein solely to the proof adduced by the Government in support of the second or substantive count of the indictment.

The Government's Proof Under the Second Count

In submitting this count to the jury the Court, after pointing out that "the gist of the offense is the *endeavor* to influence a person to give false testimony before a court of the United States" and that "the grand jury is a court of the United States" (S. M. 1136, Italics ours), charged that the prosecution was only required to "prove beyond a reasonable doubt that Abraham Brothman knew Harry Gold was to appear before the grand jury as a witness and that he knowingly, wilfully and corruptly *endeavored* to influence Harry Gold to give false testimony before the grand jury" (S. M. 1136-1137, Italics ours). The Court further admonished the jury that, although it might consider the circumstance that Gold did in fact (if his own testimony on this point was accepted by the jury) "give false testimony before the grand jury" as further proof of this "*endeavor*" (S. M. 1137, Italics ours), this was not an element or "condition of the offense" charged in the second count of the indictment but merely a circumstance that "aggravates the offense" (S. M. 1138).

In attempting to establish that Brothman *endeavored* to influence the testimony of Gold before the Grand Jury on July 31st, 1947, the Government relied exclusively on the testimony of Gold himself, the pertinent portions of

whose direct examination will be found at pages 672-681 of the stenographic transcript. Gold's cross-examination with respect to this matter appears at pages 891-903 of the transcript.

Gold testified that he did not know that he was to be a witness before the Grand Jury until he received the subpoena "a few days" before July 31st, 1947 (S. M. 892, 893). It will be recalled that during this period Gold was employed by Brothman's firm as the chemist in charge of the company's laboratory (S. M. 450) at Elmhurst in Queens County (S. M. 188, 191).

On the day that the subpoena arrived he had been doing some work in the "technical library in New York City" and on his way back to the laboratory at Elmhurst, about 10 or 11 o'clock in the evening, he stopped at the company's executive offices (S. M. 672) in the Chatham-Phoenix building in Long Island City (S. M. 169-170, 251). Brothman and some of his partners were in the office at the time (S. M. 672, 982). According to Gold, Brothman gave him the subpoena which "had that day arrived at the laboratory" and "told me there was nothing to worry about, that all I had to do was to tell the same story he had told" the Grand Jury on July 22nd (S. M. 673). In this connection it should be noted that Gold had previously testified that after Brothman had testified before the Grand Jury on July 22nd, 1947, he (Gold) had met the latter and the defendant Moskowitz in a small restaurant known as Antione Tokarsk's, which is located near the executive offices of A. Brothman & Associates in Long Island City, and that Brothman told them how he "had behaved himself with dignity" before the Grand Jury that day and that "they had asked him about a meeting with Helen which had occurred in front of the Mosler Safe Company (S. M. 670-671, 896-899). On cross-examination Gold testified that he could not recall "any further discussions with

Mr. Brothman about his (*i. e.,* Brothman's) testimony before the Grand Jury" between this date and the date when he himself received a subpoena to appear before the Grand Jury (S. M. 899).

On this same evening in the executive offices of A. Brothman & Associates in Long Island City, Brothman also told Gold he had made arrangements for him "to see Kiernan" (*i. e.,* Brothman's lawyer), so that he could do the same thing that Brothman himself had done prior to his appearance before the Grand Jury, to wit, "give Kiernan an account of the story, but the false account" (S. M. 673, 892-893). When Gold stated that he wanted to go home and see his family before he appeared before the Grand Jury, Brothman told him that there was no time for that and that he should see Kiernan "the next day" (S. M. 673). Gold, however, did not see Kiernan "the next day" but the day following that (S. M. 674).

There is no evidence or even suggestion that Brothman was with him when he visited Kiernan's office and, as he claimed, told Kiernan "the same story" he had previously told to the Federal Bureau of Investigation at the laboratory of A. Brothman & Associates on May 29th, 1947 (S. M. 674).

After leaving the executive offices of A. Brothman & Associates on this particular evening Gold went out to the laboratory of the company at Elmhurst and "worked the rest of the night until about 5 a. m." (S. M. 674).

Sometime after this—Gold could not recall just when—Brothman gave Gold what purported to be a summary account of his (Brothman's) testimony before the Grand Jury on July 22nd, 1947, and told him that he "should read it over and use it as a guide" (S. M. 675-676). Gold, however, claimed that he "hardly glanced at it", because it had been prepared by Brothman prior to his appearance before the Grand Jury and when Brothman

testified before the Grand Jury he "had left out certain things". Furthermore, Gold was "pretty busy at that time in the lab" (S. M. 676).

Gold testified that his last conversation with Brothman occurred "the night before" he appeared before the Grand Jury and early the following morning (S. M. 676-680). He claimed that "the night before he testified" Abe, Miriam (*i. e.*, the defendant Moskowitz) and I were in the Brothman offices, and Miriam said that this one night she wanted to go home early so that Abe and I would have plenty of time to match our stories before my appearance before the grand jury the next morning" (S. M. 676). All three of them left the Brothman offices in Long Island City about 11 o'clock in the evening "but first Abe said that he wanted to drive over to Woodside from Queens Plaza and pick up a fellow called Bill Levine, a Dr. Levine, a Ph. D. in Chemistry" (S. M. 676-677).

In describing what thereafter occurred, Gold testified (S. M. 677):

> "Q. Did Levine spend some time with the both of you that night? A. Well, we drove Miriam over to Eighth Avenue where she lived and Levine spent some time with us that night.
>
> Q. Thereafter, after you left Levine, how long did you and Brothman remain together? A. Abe and I talked for about an hour and we walked along—
>
> Q. Until what time? A. Until about 5 a. m.
>
> Mr. Kleinman: Would you fix the place, please?
>
> Q. Where did this conversation take place? A. We walked up and down along Skillman Avenue, where Abe lived.
>
> Q. What did you talk about? A. Abe told me again that all I had to do was tell the same story I had originally given the agents of the FBI, a story that backed up his.

Q. Did you rehash the story in that walk? A. We went over the salient details of the story."

On this occasion Gold expressed some concern over the possibility that the Federal Bureau of Investigation might have obtained a record of "some trips I had made in 1945 to the southwest" (S. M. 678) but Brothman assured him that he didn't have to worry about that "because with the literally millions or hundreds of thousands of people travelling at that time during the war years that it was exceedingly unlikely that any such records could be dug up" (S. M. 678).

Following this early morning conversation on Skillman Avenue the two men then went to Brothman's apartment, which was on 42nd Street or just off Skillman Avenue in the Sunnyside section of Long Island City (S. M. 680), where Gold was at the time staying while Mrs. Brothman was up at Peekskill for the summer (S. M. 899). Before they went to bed Brothman told Gold that, if the Grand Jury should ask him to explain their activities at the time that they met, he should tell them that "we had been collaborating together on a technical book" (S. M. 679). Brothman also told him "to try keep any mention of blueprints out of the testimony that I might give to the Grand Jury" (S. M. 679-680).

Although they did not get to bed until around 5 o'clock in the morning, Gold "got up somewhere around 7 a. m." (S. M. 680). He testified that, just before he left Brothman's apartment that morning, "Abe called me over to the bed and he asked me did I harbor any resentment toward him because of the fact that he had brought my name into the inquiry so that I now had to go down and testify before the grand jury" and that "I said that I did not" (S. M. 680-681). Brothman again admonished him that "all I had to do was to stick to my original story and everything would be all right" (S. M. 681).

On cross-examination Gold admitted that Brothman did not threaten or intimidate him in any way (S. M. 903) and that he (Gold) never indicated to Brothman that he desired to tell the Grand Jury "the truth" (S. M. 902).

As the Court will see when it examines Gold's testimony with respect to this phase of the case in its entirety (S. M. 672-681, 891-903), there is not the slightest suggestion that any of the conversations which he claimed that he had with Brothman after he received the subpoena to appear before the Grand Jury occurred within the jurisdictional confines of the Southern District of New York. On the contrary, it affirmatively appears from Gold's own testimony that every one of these alleged conversations occurred in the Eastern District of New York, or to be more specific, either at the executive offices of A. Brothman & Associates in the Chatham-Phoenix Building on 41st Street in Long Island City, or on Skillman Avenue in the Sunnyside section of Long Island City, or in Brothman's own apartment on 42nd Street in the Sunnyside section of Long Island City.

In the face of this clear and explicit proof to the contrary, it is difficult to understand how the Government can possibly claim that any element of the offense charged in the second count of the indictment was committed within the jurisdictional confines of the Southern District of New York.

FIRST POINT

In a criminal prosecution in a District Court of the United States venue is as material as any other essential allegation of the indictment and the burden of proving it always rests upon the Government. If the Government fails to sustain this burden, the defendant is entitled to an acquittal.

No one will dispute the fact that venue plays a far more vital role in a criminal prosecution in a Federal court than it does in a civil action or proceeding. In a civil action or proceeding "venue involves no more and no less than a personal privilege which may be lost by failure to assert it seasonably" (*Freeman* v. *Bee Machine Co.*, 319 U. S. 448, 453, 63 S. Ct. 832, 87 L. Ed. 1509). In a criminal prosecution, however, questions of venue "are not merely matters of formal legal procedure. They raise deep issues of public policy in the light of which legislation must be construed". Hence, whenever "Congress desires to give a choice of trial, it does so by specific venue provisions giving jurisdiction to prosecute in any criminal court of the United States *through which a process of wrongdoing moves*" (*United States* v. *Johnson*, 323 U. S. 273, 276, 65 S. Ct. 249, 89 L. Ed. 236, Italics ours). In short, in a criminal prosecution venue vitally affects a basic constitutional right which this Court has held is no less important than the basic constitutional right to trial by jury itself (*United States* v. *Streed*, 99 F. 2d 474, 478, cert. denied 306 U. S. 638, 59 S. Ct. 489, 83 L. Ed. 1039, rehearing denied 306 U. S. 668, 59 S. Ct. 590, 83 L. Ed. 1063).

Indeed, some cases even go beyond this and strongly suggest that in a criminal prosecution in a Federal court venue has jurisdictional, as well as constitutional, implications. Thus, although this Court expressly declined to pass on this point in *United States* v. *Streed, supra*

(p. 478), it will be observed that in the later case of *Weinberg v. United States*, 126 F. 2d 1004, which was decided in 1942, it not only quoted with approval the frequently cited pronouncement of Judge, later Mr. Justice, Lurton in *Horn v. Pere Marquette R. Co.*, 151 Fed. 626, 631, that "Federal courts of different states are undoubtedly foreign courts as to each other in as full sense as are state courts of different jurisdictions" but observed that, although "Congress may extend a district court's geographical jurisdiction in civil cases", "nothing has been attempted, however, in criminal matters, presumably because of the limitations of the Constitution, which by Art. III, § 2, requires trial of all crimes in the state, and by the Sixth Amendment, in the state and district where committed" (p. 1006).

In the case at bar it is obviously as unnecessary as it was in the *Streul* case to take the extreme position that in a criminal prosecution in a Federal court venue is a matter which goes to the very jurisdiction of the court itself. For this reason, we do not specifically urge this view on the present appeal, even though we feel that very cogent arguments can be advanced in support thereof.

Even though it be assumed *arguendo* that a District Court of the United States has jurisdiction to prosecute "all offenses against the laws of the United States" (Title 18, U. S. Code, § 3231), regardless of where such offenses have been committed, the fact still remains that venue in a Federal criminal prosecution is so inseparably connected with the time-honored right of an accused to be tried by a jury "of the vicinage", which is guaranteed by Clause 3 of Section 2 of Article III and by the Sixth Amendment to the Constitution of the United States, that it cannot be divorced therefrom without destroying the right itself.

Because the Southern and Eastern Districts of New York are both in the same State, only the Sixth Amendment is directly involved in the case at bar. In sharp contrast to Clause 3 of Section 2 of Article 3 of the Constitution, which merely guarantees to an accused the right to a trial by jury "in the state" where the crime is committed, the Sixth Amendment, which is a part of the Bill of Rights, and, therefore, applicable only to criminal prosecutions in Federal courts, provides that

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State *and district* wherein the crime shall have been committed, which district shall have been previously ascertained by law, • • •" (Italics ours).

It would be difficult to find a more pertinent discussion of the nature and scope of this basic constitutional right than that contained in the opinion of this Court, written by Judge (now Chief Judge) Learned Hand, in *United States* v. *Streul* (1938), 99 F. 2d 474, cert. denied 306 U. S. 638, 59 S. Ct. 489, 83 L. Ed. 1038, rehearing denied 306 U. S. 668, 59 S. Ct. 590, 83 L. Ed. 1063. In that case the defendant was convicted in the Northern District of New York on an indictment containing a conspiracy count and several substantive counts arising out of the posting of certain ransom letters in connection with a kidnapping. Although the substantive counts did not allege where the letters had been posted, it was clear from the conspiracy count (which the Court held could be used to supplement the substantive counts) that the letters described in three of the counts had been posted in the Southern District of New York in 1933 (at which time the applicable statute limited the offense charged strictly to the *mailing* or *posting* of a threatening communication). Hence, as the Court pointed out, "when these offenses were committed they were complete as

soon as the letters were posted and Strewl could have defeated counts three, four and five in either the 1934 or 1937 indictment by timely objection" thereto (p. 477). It was the contention of the Government, however, that the defendant had waived his constitutional right to be tried in the district where the offenses had been committed (*i. e.*, the Southern District of New York) by not making timely objection on this ground.

In rejecting this contention and reversing the conviction on each of these three substantive counts, this Court held (p. 478):

> "The privilege of a trial before a jury of the vicinage is more jealously preserved than that of being tried upon a perfect indictment. It is true that under rule 38(d) of the Rules of Civil Procedure for District Courts, 28 U. S. C. A. following section 723c, he who does not seasonably demand a jury may not have one, whether he consents or not; and it is also true that the Seventh Amendment, U. S. C. A. Const. Amend. 7, protects that privilege, just as the Sixth protects it in a criminal case. But in Patton v. United States, supra, page 312, 50 S. Ct. page 263, it was said that among other conditions the accused must personally consent to a jury of less than twelve, and although this was not necessary to the disposition of the appeal it has been taken as authoritative. United States v. Dubrin, 2 Cir., 93 F. 2d 499, 505; Rees v. United States, 4 Cir., 95 F. 2d 784, 790. At least so far as it required some actual consent by the accused or his counsel, as contrasted with forfeiture by delay, it seems to us that it should be so taken. Trial by jury, certainly for the graver crimes, has a high place in our traditions; around it cluster many memories of freedom won at large cost; its surrender is not to be lightly imputed to the accused. The interest at stake in a

jury of twelve is no greater than that in a jury of the vicinage—especially in the smaller centers of population where a man may be known and where he is at home: of the two it is indeed the less important, and if consent is necessary for the surrender of one, consent is equally necessary for the other."

Because the constitutional right of an accused to be tried "in the district" where the offense has been committed is at least as important as the right to trial by a jury, it has repeatedly been held that in a criminal prosecution in a District Court of the United States venue is as material as any other essential allegation of the indictment, and that the burden of proving it always rests upon the Government and that, if the Government fails to sustain this burden, the defendant is entitled to an acquittal.

United States v. *Jones* (7 Cir.—1949), 174 F. 2d 746, 748-749;
Price v. *United States* (5 Cir.—1934), 68 F. 2d 133, 134, cert. denied 292 U. S. 632, 54 S. Ct. 640, 78 L. Ed. 1486;
Cain v. *United States* (8 Cir.—1926), 12 F. 2d 580, 582;
Brightman v. *United States* (8 Cir.—1925), 7 F. 2d 532, 534;
Underwood v. *United States* (6 Cir.—1920), 267 Fed. 412;
Moran v. *United States* (6 Cir.—1920), 264 Fed. 768, 770;
Vernon v. *United States* (8 Cir.—1906), 146 Fed. 121, 126.

In addition to being the most recent case on the point, *United States* v. *Jones* (7 Cir.—1949), 174 F. 2d 746, 748, 749, is entitled to great respect because the opinion therein

was written by Judge, now Mr. Justice Minton. There the defendant was convicted in the Eastern Division of the Northern District of Illinois on a three-count indictment charging him with the illegal sale of narcotics in violation of Section 255(a) of Ttitle 26 of the United States Code. Although the prosecution established that all of the sales charged in the indictment had been made to Government agents on certain designated streets, on the dates specified in the indictment, there was no evidence that any of the streets in question were situated in the City of Chicago or in any other locality within the Northern District of Illinois. At the conclusion of the Government's case and again at the close of all the evidence the defendant moved "for discharge" solely upon the ground that the offenses charged in the indictment had not been proven.

In reversing the judgment of conviction below on the ground that there was "a total failure of proof as to venue", the Court of Appeals in the 7th Circuit, which, incidentally, construed the defendant's motion "for discharge" as the legal "equivalent of a motion for acquittal" under Rule 29 of the Federal Rules of Criminal Procedure or as a motion for a directed verdict under the old practice, said (p. 748):

> "*We think the motion for acquittal made at the conclusion of all the evidence properly raised the question of venue in the court below. It is a challenge to the Government in the presence of the court that the Government has failed in its proof.* The motion is not required by the rules to be in writing or to specify the grounds therefor. That in itself would indicate that the defendant is not required to go over the proof for the benefit of the Government or the court, in the absence of some request for more specific objection. We do not know what kind of a motion 'for discharge' was made. No written mo-

tion was set forth in the record. We assume that the motion was oral and was summarily overruled by the court, and the Government was satisfied with the record. The Government has a duty to perform. First, it must prove its case on the record *and that includes the proof of venue.* Second, if that proof is challenged as to sufficiency by a general motion for acquittal, it is the Government's duty to require the defendant to be specific in his objection, and a failure to do so will not enable the Government on appeal to say that the question was not specifically raised below. If it was not, that was the Government's fault. Surely, the defendant does not have to lead the Government through the various steps of the trial to insure a proper record for the Government to stand upon. The Government cannot be heard to say it does not know the significance of a motion for acquittal. It follows that if there was a failure in the proof of venue by the Government, such failure required an acquittal, and the court should have sustained the defendant's motion." (Italics ours.)

This is precisely what happened in the case at bar, except that the defendant Brothman, instead of incorrectly moving "for discharge", moved both at the close of the Government's affirmative case and at the close of all the evidence for a dismissal of the second count of the indictment and for the direction of a verdict (S. M. 944-945, 1028).

In this connection it will be observed that in *Price* v. *United States* (5 Cir.—1934), 68 F. 2d 133, 134, cert. denied 292 U. S. 632, 54 S. Ct. 640, 78 L. Ed. 1486, the Court took great pains to point out that "the usual way of contesting the territorial jurisdiction of the court to try a crime under the Sixth Amendment of the Constitu-

tion is on a plea of not guilty, which puts in issue the whole case". The Court then went on to say (p. 134):

> "The burden is then upon the prosecution to prove the jurisdictional allegation as to the place of the offense with the same certainty as any other on pain of failure to convict. * * * Bishop says: 'It seems that the defendant cannot plead to an indictment before justices that the offense was committed at some place beyond their jurisdiction, for this would amount to no more than the general issue'. New Criminal Proc. § 736."

Cain v. *United States* (8 Cir.—1926), 12 F. 2d 580, and *Brightman* v. *United States* (8 Cir.—1925), 7 F. 2d 532, were both narcotic cases. In each of these cases the judgment of conviction was similarly reversed on the ground that the Government had failed to prove the venue of the offense charged in the indictment.

In *Moran* v. *United States* (6 Cir.—1920), 264 Fed. 768, the Court said (p. 770):

> "The Sixth Amendment to the Federal Constitution guarantees to an accused the right to a trial by a jury 'of the State and district wherein the crime shall have been committed'. Under this constitutional provision the venue is as material as any other allegation in the indictment, and the burden to prove it rests upon the government."

In *Vernon* v. *United States* (8 Cir.—1906), 146 Fed. 121, which is one of the most frequently cited cases on this point, the defendant was convicted in the Eastern District of Missouri of the crime of bribing an officer of the United States, named Blanton, in violation of Section 5451 of the Revised Statutes of 1901. In reversing the judgment of conviction on the ground, among others, that the prosecu-

tion had failed to offer any proof that the offense had been committed within the Eastern District of Missouri, the Court said (p. 126):

> "Under this constitutional provision (*i. e.* the Sixth Amendment), the venue is as material as any other allegation in the indictment, and the burden to prove it rests upon the government. Even if it be conceded that there was sufficient evidence to show that there was a bribe, promised or given by Vernon to Blanton, *it was error to submit the cause to the jury in the absence of evidence that the offense was committed in that district.* While the venue may be proved by circumstantial evidence (Wharton Crim. Ev. § 108; Commonwealth v. Costlay, 118 Mass. 2; Bloom v. State, 68 Ark. 336, 58 S. W. 41; State v. Chamberlain, 89 Mo. 129, 1 S. W. 145), a failure to prove venue is fatal (Wharton on Crim. Law, § 601; Frazier v. State, 56 Ark. 242, 19 S. W. 838; Jones v. State, 58 Ark. 390, 24 S. W. 1073)." (Italics ours.)

Because venue is a material issue, which the prosecution always has the burden of proving once a plea of not guilty is entered, it has been held that the failure of an indictment to allege that the offense was committed within the district is not only "inexcusable" but renders the indictment itself demurrable.

> *Bratton* v. *United States* (10 Cir.—1934), 73 F. 2d 795, 798-799.

For the same reason it has been held that the Court in the district wherein the offense was committed is without jurisdiction to order a change of venue to another district, even though the application is made by the defendant himself for the purpose of promoting his own convenience and that of his witnesses.

Gates v. *United States* (10 Cir.—1941), 122 F. 2d 571, 577, cert. denied 314 U. S. 698, 62 S. Ct. 478, 86 L. Ed. 558.

Before concluding our argument under this point, it may not be amiss to note Rule 18 of the new Rules of Criminal Procedure expressly provides that "except as otherwise permitted by statute or these rules, the prosecution shall be had in the district in which the offense was committed."

The only exceptions contained in the Rules are to be found under Rules 20 and 21(a) and (b).

Rule 20 permits a proceeding pending in one district to be transferred to another district solely for the purpose of plea and sentence but only upon the request of the defendant "in writing" stating that "he wishes to plead guilty or nolo contendere". The written request of the defendant in such a case is, of course, clearly the legal equivalent of an express waiver of his constitutional right to plead and be sentenced in the district where the offense was committed. Rule 21(a) similarly permits a proceeding to be transferred to another district but only "upon motion of the defendant" where the court is satisfied that the prejudice in the district where the offense was committed is "so great" that the defendant "cannot obtain a fair and impartial trial" in that district, while Rule 21(b) permits a proceeding involving an offense committed "in more than one district" to be transferred but again only "upon motion of the defendant" to another district "in which the commission of the offense is charged".

It will thus be seen that all three of these Rules have been carefully drawn with a view to safeguarding the basic constitutional right of the accused to be tried in the district wherein the offense was committed. In this connection it will be observed that the Advisory Committee of dis-

tinguished jurists and lawyers which formulated these Rules took great pains to point out in their "Notes" to Subdivisions (a) and (b) of Rule 21 that

> "The rule provides for a change of venue *only on defendant's motion* and does not extend the same right to the prosecution, since the defendant has a constitional right to a trial in the district where the offense was committed. Constitution of the United States, Article III, Sec. 2, Par. 3; Amendment VI. *By making a motion for a change of venue, however, the defendant waives this constitutional right.*" (18 U. S. C. A., Fed. Rules Cr. Proc., p. 243—Italics ours.)

SECOND POINT

Under the Government's own proof which affirmatively and indeed conclusively established that the offense charged in the second count of the indictment was committed entirely within the Eastern District of New York, the motion of the defendant Brothman for a dismissal or for the direction of a verdict as respects this count (S. M. 944-945, 1028) should have been granted.

The second count of the indictment is based on Section 241 of Title 18 of the 1946 Edition of the United States Code (formerly Section 135 of the Criminal Code of 1909 and now Section 1503 of Title 18 of the 1948 Edition of the Code). The pertinent portions of this Section, which is popularly known as the "Obstruction of Justice Statute", read as follows:

> "Whoever corruptly, • • • shall endeavor to influence, intimidate, or impede any witness, in any court of the United States • • • shall be fined not more than $5,000 or imprisoned not more than five years, or both."

As the District Court instructed the jury, "the gist of the offense" charged in this count of the indictment "is the *endeavor* to influence a person to give false testimony before a court of the United States" (S. M. 1136—Italics ours) and that, while the circumstance that Gold may actually have given false testimony to the Grand Jury, might be considered as some proof of this "endeavor" and might aggravate the statutory offense, it was not an element or "condition of the offense" (S. M. 1137-1138). In addition thereto, it will be observed that in rejecting the contention of the defendant Brothman at the beginning of the trial that there was a merger of the conspiracy and substantive counts because the substantive count also required concert or agreement (S. M. 31-39), the Court unequivocally ruled that this latter count merely charged "unilateral action on the part of Brothman in endeavoring to influence a juror" and that "no concert of action was required to violate Section 241" (S. M. 285-288).

The propriety of this ruling and of the Court's charge is too clear to admit of doubt.

> *United States* v. *Russell*, 255 U. S. 138, 143, 41 S. Ct. 260, 65 L. Ed. 553;
> *Catrino* v. *United States* (9 Cir.—1949), 176 F. 2d 884, 886;
> *Bedell* v. *United States* (8 Cir.—1935), 78 F. 2d 358, 369, cert. denied 296 U. S. 628, 56 S. Ct. 151, 80 L. Ed. 447.

The second count of the indictment herein specifically charges that this "endeavor" on the part of Brothman to influence the testimony of Gold before the Grand Jury occurred "on or about the 31st day of July, 1947, *at the Southern District of New York*" (S. M. 1118-1119—Italics ours). In the light of this clear and explicit allegation, the defendant Brothman obviously was in no position to

challenge the legal sufficiency of the indictment itself. Under the circumstances, the only procedural course that was open to him under the Rules was the one that he ultimately pursued of moving to dismiss or for the direction of a verdict at the close of the prosecution's case and again at the close of the evidence (S. M. 944-945, 1028) on the ground that the proof was insufficient to sustain a conviction (Rule 29, Rules of Cr. Proc.).

No useful purpose is to be served by again analyzing the Government's proof on the issue of venue, which as already noted, consisted entirely of the testimony of Harry Gold himself at pages 672-681 and 891-903 of the stenographic transcript. As the Court will see when it examines these portions of the record, there is not a shred of evidence from which it can possibly be inferred that any of the alleged conversations on which the Government relied to establish this "endeavor" occurred at any point within the territorial jurisdiction of the Southern District of New York. On the contrary, the Government's own proof affirmatively and indeed conclusively established that *every one* of these alleged conversations occurred either at the executive offices of A. Brothman & Associates in the Chatham-Phoenix Building on 41st Street in Long Island City in the County of Queens or on Skillman Avenue in the Sunnyside section of Long Island City or in Brothman's own apartment on 42nd Street in this same section of Long Island City (S. M. 672-681, 891-903).

Under *United States* v. *Jones* (7 Cir.—1949), 174 F. 2d 746, and the other authorities cited under the First Point of this brief, it is respectfully submitted that this fatal defect in the Government's proof was squarely raised by the motions of the defendant Brothman for a dismissal or the direction of a verdict of acquittal as respects this count of the indictment (S. M. 944-945, 1028). As Judge, now Mr. Justice, Minton observed in the *Jones* case, a motion of this character constitutes "a challenge to the Government in the presence of the court that the Government has failed in its proof" (p. 748).

The issue presently before this Court, however, goes much deeper than a mere failure of proof as respects a material allegation of the second count of the indictment. It involves the flagrant violation of a basic constitutional right which this Court has held is at least as important as the right to trial by jury and, like this latter right, cannot be waived except with the *actual* consent of accused (*United States* v. *Streul*, 99 F. 2d 474, 478, cert. denied 306 U. S. 638, 59 S. Ct. 489, 83 L. Ed. 1038, rehearing denied 306 U. S. 668, 59 S. Ct. 59, 83 L. Ed. 1063). This being so, it is respectfully submitted that the question of whether or not the conviction under the second count should be allowed to stand is one which, in the final analysis, can be determined only on the basis of the broad principles of constitutional construction laid down by the Supreme Court *Patton* v. *United States*, 281 U. S. 276, 50 S. Ct. 253, 74 L. Ed. 854, and later applied by this Court in *United States* v. *Streul* (*supra*) to the very constitutional safeguard involved in the case at bar.

In *Patton* v. *United States* (*supra*, p. 312), the Supreme Court, in speaking of the closely interrelated constitutional mandate of the Sixth Amendment guaranteeing the accused in a criminal prosecution in a Federal court the right to a trial by jury, squarely held that "before any waiver can become effective, the consent of government counsel and the sanction of the court must be had, *in addition to the express and intelligent consent of the defendant.*" (Italics ours.) If, as stated by this Court in *United States* v. *Streul* (*supra*, p. 478), "the interest at stake in a jury of twelve is no greater than in a jury of the vicinage", it is clear that "if consent is necessary for the surrender of one, consent is equally necessary for the other".

CONCLUSION

The judgment of conviction herein should be reversed as respects the second count of the indictment and said count of the indictment should be dismissed.

Dated: New York, N. Y., April 20, 1951.

Respectfully submitted,

JOHN MCKIM MINTON,
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Abraham Brothman.

JOHN MCKIM MINTON,
WILLIAM F. MCNULTY,
Of Counsel.

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

against

ABRAHAM BROTHMAN and
MIRIAM MOSKOWITZ,

Defendants-Appellants.

BRIEF FOR THE DEFENDANT-APPELLANT MIRIAM MOSKOWITZ

WILLIAM L. MASSING,
Attorney for Defendant-Appellant,
Miriam Moskowitz.

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CASES CITED

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BRIEF FOR THE DEFENDANT-APPELLANT MIRIAM MOSKOWITZ

Statement

This is an appeal from a judgment of conviction entered in the United States District Court for the Southern District of New York on November 28th, 1950, after the trial before Hon. Irving R. Kaufman and a jury of an indictment charging (1) both defendants herein with the crime of conspiracy under Section 88 of Title 18 of the United States Code (1946 Ed.) and (2) the defendant Brothman alone with the substantive crime of obstructing justice in violation of Section 241 of the same Title.

The defendant Brothman, whose appeal is being separately prosecuted, was convicted under both counts of the indictment (S. M. 1158 [1]). Under the first or conspiracy count he was sentenced to two years in prison and fined $10,000 and under the second or substantive count to five years in prison and fined $500, the prison sentences to run consecutively (S. M. 1175).

[1] Numerals in parentheses refer to pages in the typewritten record.

The defendant Moskowitz was convicted under the conspiracy count (S. M. 1158) and sentenced to two years in prison and fined $10,000 (S. M. 1176).

The Background of the Indictment

The background of the indictment is not summarized at this point inasmuch as a complete and detailed statement of the facts concerning the same is set forth in the brief for the defendant Brothman on pages 2 to 6 of said brief, to which the Court is respectfully referred.

The Indictment

The indictment is set forth in the aforementioned brief of defendant Brothman on pages 6 to 8 and the Court is respectfully referred to that brief for the indictment and for the ensuing summary, on pages 8 to 11 of said brief, of certain of the testimony presented by the Government in proving the offenses charged in the indictment.

The Issues Raised by the Defendant Moskowitz

On this appeal the defendant Moskowitz raises the following fundamental questions:

1. The Government did not establish that Moskowitz had participated in the conspiracy. The case should not have been submitted to the jury.
2. The defendant Moskowitz was prejudiced by repeated references to the failure to contradict the testimony offered by the prosecution.

The Government's Proof with Respect to the Defendant Moskowitz

The following statement refers to all testimony regarding the relationship of Miriam Moskowitz to the alleged conspiracy.

When the F.B.I. agents arrived at the office of A. Brothman Associates, at 11:15 A. M. on May 29, 1947, they saw Moskowitz sitting at a desk in the office (S. M. 170). She told the agents that Brothman was not in, after which she telephoned him and invited them to speak to him (S. M. 171). They remained in the office as did Moskowitz, until Brothman arrived half an hour later. At that time Moskowitz left the room.[1]

After the agents had gone Gold arrived at the office. Brothman told him that Moskowitz was at that very moment on her way to see Needleman, a lawyer for the Amtorg Corp. (S. M. 629).

After the conversation in which Brothman told him of the F.B.I. inquiry, Gold left the office and returned to the laboratory. About 4 P. M. the F.B.I. agents entered the laboratory, Moskowitz following immediately behind them. She informed Gold that Brothman had a headache and that they would get in touch with him later. Then she left (S. M. 636).

About 8 P. M., while Gold was still talking to the F.B.I. agents, Moskowitz telephoned. Gold told her he was still busy (S. M. 640).

The agents left about 9 P. M. (S. M. 645). Shortly after that Moskowitz telephoned again. Without mentioning the agents, Gold said he was through with his work. She said that she and Brothman would be out shortly, and they did arrive shortly afterwards (S. M. 647).

Brothman asked him how he had made out with the agents. Before he could complete his answer, Moskowitz interrupted by hugging him and saying to Brotinman that

[1] All the facts which follow were testified to solely by Gold.

he had been wonderful and superbly nonchalant when the agents had walked in earlier that afternoon (S. M. 647-648).

They left immediately, and all three had dinner in a restaurant. Most of the conversation was between Brothman and Gold. Those two kept reassuring each other that the F.B.I. did not know as much as they had feared (S. M. 648). Moskowitz said that she had been to see Needleman, that she was sure that she had been followed for part of the route on which she was driving and that she had succeeded in eluding her pursuers. She also said that Needleman's advice had been for Brothman and Gold not to talk to the F.B.I. (S. M. 648-649).

After dinner the three returned to the laboratory. Brothman asked Gold about what he had told the agents. Gold told him and Brothman said that he had made a very fine choice of a story. Gold refused to tell Brothman about the extent of his espionage activities, revealing only that he had lied to him about his personal life. He told Brothman, in connection with the fact that he had used a false name in his initial contact with the Brothman organization, that he was going to say, if he were questioned that he did this because he was afraid he would lose his job in Philadelphia if it were discovered that he was doing work in New York. Moskowitz was present during this conversation (S. M. 650) except for an interval during which she went out for coffee (S. M. 652).

Later that night or the following night (S. M. 654) all three drove to Pennsylvania Station, from which place Gold was going to Philadelphia for the weekend (S. M. 655). It had been a common practice for Brothman to drive Gold to the station and it was not unusual for Moskowitz to be present on such occasions (S. M. 838).

A quarrel broke out between Brothman and Gold. Brothman criticized Gold for bringing to work in the laboratory, on several occasions, a man who was a vital factor in Soviet espionage and who might have directed the federal authorities to Brothman (S. M. 655-656).

Moskowitz interrupted. She said that they were both acting foolishly and that it was no time for them to fight because a falling out between the two of them was exactly what the federal authorities wanted (S. M. 656-657).

About six weeks later Brothman received a subpoena to appear before the Grand Jury (S. M. 664). It was only after this happened that Gold felt that he might be called upon to testify. He had not, after his interview with the F.B.I. men, anticipated further questioning (S. M. 916-917).

A short while after Brothman received the subpoena, Brothman and Moskowitz, individually or jointly, told Gold that a lawyer had been engaged (S. M. 666).

A day or two later Moskowitz told Gold that she was concerned because Brothman had stated that he was considering, when he would testify before the Grand Jury, changing the story he had given the F.B.I. She said she was going to try to get him to stick to his original story (S. M. 667).

At a later dinner all three were present. Brothman told Gold that he had seen the lawyer, had told him the same story, and was going to tell the Grand Jury the same story (S. M. 668). Moskowitz said that was good (S. M. 669). While Brothman was away from the table for a short while, Moskowitz said to Gold that she and Needleman had persuaded Brothman away from his desire to change the story he had given the F.B.I. (S. M. 669-670).

After Brothman testified before the Grand Jury, all three met in a restaurant (S. M. 670). Brothman said he had behaved with dignity, neither wincing nor cringing nor flinching. Moskowitz said that that was good (S. M. 671). She was referring to his behavior (S. M. 897-898). Brothman also said he had later gone to see the lawyer and had told him, with some omissions, of his testimony (S. M. 671-672).

All three were together the night before Gold appeared before the Grand Jury. Moskowitz said, Gold testified, that she wanted to go home early so that he and Brothman

would have time to match their stories (S. M. 676). On cross-examination Gold described that statement as follows: "Moskowitz wanted to go home early so that we [Gold and Brothman] could have a talk" (S. M. 900).

After Gold's testimony before the Grand Jury, all three met in a restaurant (S. M. 683). Gold told the others that he had succeeded in creating the appearance of a frightened man who had gone to the fringe of espionage but not beyond it. Brothman and Moskowitz said that if he had created such an impression it was fine (S. M. 683-684).

Moskowitz had begun to work for the Brothman organization in 1945, had become a member of the firm in 1946 or 1947 (S. M. 837), and was secretary, treasurer, stenographer and bookkeeper—"in fact the whole office force" (S. M. 630).

Gold started working for Brothman's firm in 1946 (S. M. 838). Moskowitz was there at the time (S. M. 837). He remained with the firm until June of 1948 (S. M. 684). In the interval others had entered and left the organization (S. M. 829). When he came to work there he had lost his espionage contacts (S. M. 849) and his work was entirely of a legitimate nature (S. M. 848-849).

In his relationship with Moskowitz, Gold found her to be over-aggressive and of violent temper. He avoided her (S. M. 910). Shortly before he left the firm he complained that she had not treated him with sufficient dignity (S. M. 868), had bossed him around and treated him like an office boy (S. M. 910).

POINT I

The Government did not establish that Moskowitz had participated in the conspiracy. The case should not have been submitted to the jury.

a.

A person who has no knowledge of the scheme is not a conspirator. *United States* v. *Falcone*, 311 U. S. 205 (1940). To establish the necessary intent the evidence of knowledge

must be clear, unequivocal and free from reliance upon inference upon inference. *Direct Sales Co.* v. *United States,* 319 U. S. 703, 711 (1943). See, also, *United States* v. *Zeuli,* 137 Fed. (2d) 845 (C. A., 2, 1943); *Goodman* v. *United States,* 128 Fed. (2) 854 (C. A., 9, 1942); *Moss* v. *United States,* 132 Fed. (2) 875 (C. A., 6, 1943). While the knowledge need not be of details, it must extend to the purpose of the conspiracy. *Lee* v. *United States,* 106 Fed. (2) 906 (C. A., 9, 1936); *Marcante* v. *United States,* 49 Fed. (2) 156 (C. A., 10, 1931).

Knowledge is not to be inferred from the mere fact that the accused does an act which, objectively, tends to advance the scheme, *Direct Sales Co.* v. *United States,* 319 U. S. 703, 709 (1943), or which is the substantive offense. *United States* v. *Crimmins,* 123 Fed. (2) 271 (C. A., 2, 1941); *United States* v. *Dubrin,* 93 Fed. (2) 499, 503 (C. A., 2, 1937); *Lee* v. *United States,* 106 Fed. (2d) 906 (C. A., 9, 1936); *Dickerson* v. *United States,* 18 Fed. (2) 887 (C. A., 8, 1927); *Di Bonaventura* v. *United States,* 15 Fed. (2) 494 (C. A., 4, 1926); *Linde* v. *United States,* 13 Fed. (2) 59 (C. A., 8, 1926). This is true even where the accused reaps a benefit from the overt act, *United States* v. *Gerke,* 125 Fed. (2) 243, 246 (C. A., 3, 1942); *Bacon* v. *United States,* 127 Fed. (2) 985 (C. A., 10, 1942), or from the overt acts of those alleged to be associated with him. *People* v. *Winter,* 288 N. Y. 418 (1942).

Acts which are evidence of aiding and abetting an offense do not establish participation in a conspiracy to commit it. *Di Bonaventura* v. *United States,* 15 Fed. (2) 494 (C. A., 4, 1926). Despite the wide latitude enjoyed by the Government in conspiracy prosecutions, the offense of aiding and abetting should not be confused with a conspiracy charge to the prejudice of the defendant. *United States* v. *Falcone,* 311 U. S. 205, 210 (1940); see *Krulewitch* v. *United States,* 336 U. S. 440, 450 (1949); cf. *Pinkerton* v. *United States,* 328 U. S. 640 (1946).

Measured against these standards, the evidence against Moskowitz was insufficient. Considering the events of May 29, 1947, it is plain that Gold and Brothman had already,

without the knowledge of Moskowitz, committed to the F.B.I. agents the story to which they later adhered. That Moskowitz, dater that day, hugged Gold before he had completed his statement to Brothman of how he had made out with the agents shows not knowledge of what he said, but, at best, only approval of the manner in which he had greeted them. That is established precisely by her comment on that occasion. Nor is knowledge established by the reciprocal assurances of Gold and Brothman, in her presence, that the F.B.I. did not know as much as those two had feared. So far as the evidence discloses, Moskowitz knew even less. She did not know the substance of the statements either Gold or Brothman had given and could not know whether they were true or false. There is no claim that Moskowitz participated in the dealings the others allegedly attempted to conceal and there is no evidence that she knew the alleged true facts with respect to which Brothman and Gold made false statements. Nor did she know of any attempt or solicitation to conform the stories of these two. She knew only that she had been followed and she knew, also, the advice Needleman had given for conveyance to Gold and Brothman: Not to talk to the F.B.I. agents.

The conversation between Gold and Brothman which took place in her presence, later that evening, in the laboratory, does not help the prosecution's case. Gold told Brothman what he had told the F.B.I. agents. If Brothman's comment that Gold had made a fine choice of a story was in fact made in Moskowitz's presence and can be presumed to have conveyed the knowledge to her of its falsity, it, nonetheless, did not apprise her of the substance of the statement Brothman had given the agents or of its truth or falsity. Nor did it reveal to her the purpose the others, had had in mind, nor the purpose they contemplated, if such there was at that time.[1]

[1] Gold did not anticipate being called to testify until much later, when Brothman received his subpoena.

Her action later that night or the following night in breaking up the quarrel between Gold and Brothman reveals nothing more than knowledge of a commonplace known to anyone who has ever read a detective story: that the police exploit a falling out among suspects. Her fear was natural enough in view of her knowledge that the Government was interested in the others. Still, the evidence does not show that she knew what they wanted to conceal, that they had agreed to conceal, or how they proposed to do so.

Thereafter Moskowitz spoke to Gold of her concern about Brothman's contemplated change in his story, of her desire to persuade him to affirm his earlier story and of her success in that effort, with Needleman, to persuade Brothman. Still the evidence fails to reveal her knowledge of what that story was, of whether it was false, of whether it was to serve the purpose of enabling Gold to conform his testimony thereto, or of the purpose of conformity. The conversations with Gold show only a unilateral effort on her part, an effort which could have been motivated by any number of reasons consistent with the absence of knowledge.

The conspiracy which was charged was one which included Gold as a principal. The effort which Moskowitz directed towards Brothman fails to show that she tried to maintain Brothman's story for Gold's protection and use as well, or that she did anything in concert with Gold, or that she participated in a scheme to which he was a party, or that she had a stake in the success of any scheme to which he was a party. See *United States* v. *Peoni*, 100 Fed. (2) 401, 403 (C. A., 2, 1938); *United States* v. *Koch*, 113 Fed. (2) 982, 983 (C. A., 2, 1940); *United States* v. *Zeuli*, 137 Fed. (2) 854 (C. A., 2, 1943). The situation was not such that she must have known of the use to which Gold had, or would later, put the story. Cf., *United States* v. *Bruno*, 105 Fed. (2) 921 (C. A., 2, 1939).

Moskowitz's statement to Brothman that it was good that he had determined not to change his story does not buttress

the claim of knowledge of the existence of a conspiracy or of its objectives. Nor is it buttressed by her gratuitous approval of Brothman's behavior in not cringing nor flinching before the Grand Jury. Similarly, her later approval of the impression of a frightened man that Gold said he had created before the Grand Jury carries no inference of knowledge on her part of the conspiracy or of the method of operation or of its objectives.

The evidence which comes closest to revealing a knowledge on the part of Moskowitz of a plan to conform stories is Gold's testimony that on the night before Gold was to testify before the Grand Jury she expressed a desire to leave early so that he and Brothman could match their testimony. While it may be noted that even this does not show knowledge of such purpose as the other two may have had, Gold later testified to the incident on cross-examination and the subject was not further pursued at the trial, as follows: "Moskowitz wanted to go home early so that we could have a talk" (S. M. 900). That puts the matter in a different light. We submit that the inference of knowledge cannot rest upon so tenuous a foundation.

Moreover, both versions reveal a desire on her part not to participate in the scheme or an awareness that she was an outsider whose participation was not desired by the others.

b.

Such meager evidence as there is as to guilty knowledge on the part of Moskowitz is drained of all vitality by the missing answer to an obvious question: If Moskowitz was a conspirator, what was her motive? Early in the case the Government promised to offer testimony as to motive (S. M. 185) and it was on that basis that the affiliation, or sympathies, of various persons with the Communist Party was made the subject of the testimony. There is not a shred of evidence in this case that Moskowitz was a Communist, or, indeed, that she had any political ideas

or sympathies of any kind. So far as Moskowitz is concerned, the Government established nothing with regard to such a motive.

Indeed, it established nothing with regard to any other motive. None was suggested by the facts. She had done nothing which she might want to conceal from anyone. She had not participated in the dealings which were the subject of the Grand Jury's inquiry. One searches in vain for her stake in the venture. *United States* v. *Falcone*, 109 Fed. (2) 579 (C. A., 2, 1940), aff'd 311 U. S. 205 (1940); *United States* v. *Di Re*, 159 Fed. (2) 818 (C. A., 2, 1947), aff'd 332 U. S. 581 (1948).

Absent from the evidence, too, is any suggestion as to the role that Moskowitz was to play in the conspiracy. What the conspiracy contemplated is described in paragraphs 3-6 of the first count of the indictment. It contemplated that Brothman and Gold would agree upon a fictitious story as to their associations with each other and with other persons, that Brothman would tell the Grand Jury a false story, later to inform Gold of it so that Gold would be in a position to tell the Grand Jury, and would tell it, a false story which was consonant with Brothman's.

In this scheme there was nothing for Moskowitz to agree to do. It lacked an essential ingredient of the crime: Her agreement to take some part in the plan. *United States* v. *Dellaro*, 99 Fed. (2) 781 (C. A., 2, 1938).

The fact is there was simply nothing for her to do, and there is no explanation as to why the others, if they plotted, should gratuitously invite her, a person who could not help them and whose non-participation could not hinder them.

Gold had found her personally obnoxious. He had avoided her. While this may explain his testimony at the trial, it hardly explains his consent to her participation in the scheme. Without any possible gain to him, it put his life in her hands.

Not only did the evidence fail to suggest her reason for her alleged entry into the scheme, it failed to indicate a part that she was to play, and it failed to show a reason

why the others should desire her participation. On the last matter, such evidence as there was pointed in the other direction.

c.

This Court is well aware of the ease with which are swept "within the drag net of conspiracy all those who have been associated in any degree whatever with the main offenders". *United States* v. *Falcone*, 109 Fed. (2) 579, 581 (1940). While it may be conceded that the nature of the crime offers its own difficulties in the way of proof, the method of procedure in conspiracy cases provides great latitude and advantage to the prosecution. Frequently the procedure, in times of general anxiety or of official frenzy, becomes an instrument of general oppression. See opinion of Jackson, J., concurring in *Krulewitch* v. *United States*, 336 U. S. 440, 445-458 (1949).

In this case the prosecution had, in addition to its procedural advantages, the benefit of a willing witness in Gold. Gold participated in the alleged conspiracy and his motives made for the most complete cooperation with the prosecution, since at the time of this trial he was awaiting sentence on his guilty plea to the crime of espionage which carried a possible death sentence (S. M. 444).

Under these circumstances we may safely assume that Gold's testimony included every bit of evidence he could provide against the defendants. Despite this, the testimony adduced cast no more than a suspicion upon Moskowitz. Under such circumstances the case against her should have been dismissed.

POINT II

The defendant Moskowitz was prejudiced by repeated references to the failure to contradict the testimony offered by the prosecution.

a.

The following is an extract from the summation of the United States Attorney (S. M. 1077-1078):

"Mr. Saypol: . . . The truth of the testimony offered here by Miss Bentley, Gold and others, is conclusively established by the failure of the defense to produce one solitary word contradicting any of this testimony.

Mr. Kleinman: I must make an objection to that, if your Honor please, and I won't interrupt any more.

The Court: Overruled. I will deal with that later properly myself.

Mr. Saypol: There has not been a word regarding what was said in conferences with a lawyer named Kiernan who was consulted at the time of their appearances before the Grand Jury. . . . Not a single word has been uttered regarding that meeting on the night of September 29th, 1941. . . . Not a word has been uttered regarding that all night session at the hotel. . . .

Mr. Kleinman: If your Honor please, I simply want to state one objection and that is to the constant references to something which I submit to your Honor the District Attorney should not refer to. I think your Honor knows what I have in mind.

The Court: I know very well what you have in mind. Overruled.

Mr. Kleinman: Exception.

The Court: I think Mr. Saypol is fully familiar with the rules and with the dangers of trespassing the rules. Proceed.

Mr. Saypol: Indeed I am, your Honor, and I regret the interruption."

At another point (S. M. 1079):

"Not one word was offered to show that anything Miss Bentley said was untrue.

The only ones who have knowledge of the truth of what actually happened between those people were those who participated. . . ."

Again (S. M. 1083):

"The one issue at this time, so far as Gold is concerned, is whether or not he told the truth. His truthfulness is established by the testimony of the other witnesses, by documents, and even more eloquently by the fact that not one word Harry Gold has spoken in this courtroom has been contradicted by any evidence produced by the defense.

Mr. Kleinman: I object to that, if your Honor please, and I ask for the withdrawal of a juror and the declaration of a mistrial.

The Court: Denied.

Mr. Kleinman: Exception, sir."

Again (S. M. 1094):

"Now, leave Bentley and Gold. Leave them knowing that not one word has been spoken contradicting anything they have testified to. Not one word to contradict the existence of the conspiracy between Brothman, Moskowitz and Gold. . . ."

Again (S. M. 1096):

"We have heard no testimony contradicting the existence of this conspiracy, negating its existence. . . ."

Again (S. M. 1100):

". . . It has not been [referring to the proof] and it cannot be contradicted. . . ."

At the conclusion of the summation the jury was excused. A motion for the declaration of a mistrial was made on the ground that there had been repeated thinly-veiled references to the failure of the defendants to testify.

This was denied, the Court stating that there was a difference between a statement that the testimony was uncontradicted and a statement that the defendants did not take the stand (S. M. 1100-1101).

b.

It may be conceded that, as a general rule, a reference to the testimony in the prosecution's case as uncontradicted is not an indirect comment on the defendants' failure to testify. *Lefkowitz* v. *United States*, 273 Fed. 664 (C. A., 2, 1921), cert. den. 257 U. S. 637. Where, however, only the defendant and the prosecution's witnesses were present at the incidents testified to by the latter, the defendants are the only ones in a position to contradict that testimony, and a reference to the fact that it is uncontradicted is tantamount to a comment on their failure to testify. *Linden* v. *United States*, 296 Fed. 104 (C. A., 3, 1924); *Barnes* v. *United States*, 8 Fed. (2) 832 (C. A., 8, 1925); *People* v. *Watson*, 216 N. Y. 565 (1916).

Where, because of the facts, this principle has not been applied, its validity has nevertheless been recognized. *Langford* v. *United States*, 178 Fed. (2) 48, 55 (C. A., 9, 1949); *Hood* v. *United States*, 59 Fed. (2) 153, 155 (C. A., 10, 1932); *Baker* v. *United States*, 115 Fed. (2) 533, 544 (C. A., 8, 1940); *Morrison* v. *United States*, 6 Fed. (2) 809, 811 (C. A., 8, 1925); *Robilio* v. *United States*, 291 Fed. 975, 985 (C. A., 6, 1923); *Shea* v. *United States*, 251 Fed. 440, 445 (C. A., 6, 1918). This Court has given it at least implicit recognition, *United States* v. *Shapiro*, 103 Fed. (2) 775 (1939); *Rice* v. *United States*, 35 Fed. (2) 689, 694-695 (1929).

It is clear that the situation of Moskowitz falls squarely within the area in which that rule operates. Except for the inconsequental testimony as to her presence in the office when the F.B.I. agents arrived, such connection as she had with the conspiracy was established through the testimony of Gold, and that consisted of things she said

or statements that were made in her presence. On none of these occasions was anyone present but Gold and the defendants. On two of these occasions only Gold and Moskowitz were present. Only the defendants, or Moskowitz alone (in connection with the latter occasions), could have contradicted Gold's testimony.

c.

When attention was called to the improper remarks of the prosecutor, the response of the Court should have been immediate and positive. There should have been a prompt and emphatic condemnation of the prosecutor, a warning against repetition of the offense, an immediate admonition to the jury to disregard the impropriety and an instruction that failure to testify should result in no presumption against the defendants. *Wilson* v. *United States*, 149 U. S. 60 (1893); *De Mayo* v. *United States*, 32 Fed. (2) 472 (C. A., 8, 1929); *Tingle* v. *United States*, 38 Fed. (2) 573 (C. A., 8, 1930); see *N. Y. Central R.R. Co.* v. *Johnson*, 279 U. S. 310, 318 (1929); *Berger* v. *United States*, 295 U. S. 78, 84-89 (1935).

A striking contrast to these requirements is furnished by the action taken at the trial. Not only was there a failure to take immediate action, but further impropriety was encouraged. The first objection was overruled,[1] the Trial Judge simply stating that he would deal with that, "later", himself.

The second objection was overruled and followed by a gratuitous statement that the prosecutor was fully familiar with the rules and their limitations. This was immediately affirmed by the prosecutor. It implied that that was proper procedure.

Another significance may be attributed to the incident.

[1] Cf. *Viereck* v. *United States*, 318 U. S. 236, 247-248 (1943), where the Trial Judge overruled, as made too late, objections to improper comments of the prosecutor.

It was an invitation to the prosecutor to proceed with that kind of comment, mindful of the risk of reversal, and being careful only to stop short of that point at which an appellate court might say that he had gone too far.

With this license, the prosecutor continued. Additional objection was unavailing.

d.

There was no way of neutralizing the repeated sledge hammer blows upon the consciousness of the jury. The negative attitude of the Court aggravated the damage. And the situation was carried beyond salvage by the approbation implicit in its statement that "I think Mr. Saypol is fully familiar with the rules . . .".

The influence of the Trial Judge is great and "jurors are ever watchful of the words that fall from him". *Bollenbach* v. *United States*, 326 U. S. 607, 612 (1946). Jurors take a similar attitude of confidence towards the prosecutor. *Berger* v. *United States*, 295 U. S. 78, 88 (1935).

In the main, those cases which have held that improper comment was not prejudicial have had in them some element of immediate positive action by the Trial Judge or of withdrawal of remarks by the prosecutor. *United States* v. *Shapiro*, 103 Fed. (2) 775 (C. A., 2, 1939); *Robilio* v. *United States*, 291 Fed. 975 (C. A., 6, 1923); *Lanier* v. *United States*, 276 Fed. 699 (C. A., 5, 1921); *Cross* v. *United States*, 68 Fed. (2) 366 (C. A., 5, 1933); *Morgan* v. *United States*, 31 Fed. (2) 385 (C. A., 7, 1929); *Brooks* v. *United States* 8 Fed. (2) 593 (C. A., 9, 1925). Not only is that element lacking here, but the Court affirmatively expressed its opinion that the United States Attorney knew what he was doing.

Admittedly, the Court charged that the defendants were not required to prove their innocence, and that not a single unfavorable inference could be drawn against them because they did not take the stand (S. M. 1142). This came in the middle of a long charge, long after the repeated impropriety and long after the impression they created

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CONFIDENTIAL

SAC, New York

August 8, 1946

Director, FBI

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 5/17/88 BY 3042 [illegible]

GREGORY
ESPIONAGE - R
Refer - 5 IS
(BILL)

DECLASSIFIED BY SP-5 1256/pac ON 4-22-83

You will recall that informant Gregory stated that Bill was Gregory's Russian contact from November, 1943, to September, 1944. Gregory advised that Bill is the husband of Catherine who was another Russian contact of Gregory's. Bill and Catherine have not been identified to date.

According to Gregory, she met Bill originally and always on subsequent occasions in New York City. Gregory met Bill some times in Alexander's on Lexington Avenue, in various Schraft Restaurants, and a few other restaurants in Manhattan. Gregory informed that in about September, 1944, Bill told her that he was contemplating moving to Baltimore or Washington and that he was going to personally take care of the Silvermaster group in Washington. Gregory stated that Silvermaster made the statement in August, 1945, that Bill was still around at that time.

Gregory described Bill as follows:

RECORDED & INDEXED 65-56402-1544 F B I AUG 12 1946 58

Age - Approximately 38 to 40
Height - 5' 10 to 5' 11
Weight - 150 to 156 pounds
Build - medium slender
Hair - straight, black, parted on left side, hair has habit of falling down on his forehead and he continues to brush it back with his hand
Eyes - brownish black, appear sunken
Nose - short, turned up
Peculiarities - high cheekbones, oval face, Slavic type, rather large lips somewhat purple-bluish in color, small teeth. He has either a missing tooth or a large space in the upper right side of his mouth.
Dress - meticulous dresser, wears young businessman's type clothes, wears a triangular shaped handkerchief in his pocket which usually matches his tie and socks. In summertime he wears brown and white seersucker suits, brown and white sport shoes and a coconut colored straw hat.

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SAC, New York

Occupation - either a clothing salesman or someone in the clothing industry
Speech - speaks English fairly well with Russian or European accent.

Gregory furnished the following description of Catherine, who Gregory described as Bill's wife:

Age - 34 to 35
Height - 5' 8 to 5' 9
Weight - 140 pounds
Build - slender
Hair - dark blond, at that time wore her hair in a sort of feather cut fashion
Eyes - blue-green
Complexion - light
Peculiarities - small turned up nose, had foot trouble and wears a size eight shoe which is usually flat heeled
Dress - usually wears suits with ruffled blouses
Business - unknown, but she was at one time a secretary and had knowledge of shorthand and typing.

Catherine advised Gregory that at one time she was employed in Washington D. C. Gregory learned from Bill that he used to court Catherine in Washington in 1938 or 1939 and remembered he mentioned having visited her in the rooming house where she resided. Catherine is believed to be a native born American and Gregory has some faint recollection that she mentioned having come from Kansas or possibly some other midwestern state. Catherine talks with a typical midwestern accent and has all the mannerisms of a native born American. Although Catherine and Bill did mention occasionally that they had been married seven years, Gregory was somewhat doubtful that they had in fact been married that long. In July or August, 1944, Catherine gave birth to a daughter and at that time was living on Fifth Avenue near Eighth Street in New York City. Gregory learned that probably in September, 1944, Catherine and Bill moved from New York to either Baltimore or Washington.

It is desired that the offices receiving copies of this letter again call to the attention of Agents handling Communist and Russian matters within the respective Field Divisions the descriptions of Catherine and Bill in order to attempt to identify them in connection with this case. The Agents' particular

SAC, New York

attention should be called to the summer attire of Bill since it is noted that he is known to wear brown and white seersucker suits, brown and white sport shoes, and a coconut colored straw hat. This description, together with the fact that Bill when he moved to either Baltimore or Washington intended to personally take over the Silvermaster group, may assist Agents of these offices in effecting an identification. Individuals who appear to fit this description and who are known to travel to Washington from New York or Baltimore may possibly be the individual who contacting either Silvermaster or one of that group.

Any possibilities of causing an identification of either Bill or Catherine should immediately be brought to the attention of the Bureau.

CC - Baltimore
Washington

ASB:JAG
100-17493

SECRET

September 17, 1946

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(S) CONFIDENTIAL

[redacted] ASCERTAINED ON SEPTEMBER [redacted] ROBERT MILLER SENT FOLLOWING TELEGRAM TO RANDOLPH FELTUS, ONE TWO EIGHT EAST FIFTY-SIXTH STREET, NYC, QUOTE TRIED YOUR OLD PHONE TONIGHT TO SAY ALL SET PER CONVERSATION. LETTER FOLLOWS. REGARDS, BOB UNQUOTE. INFORMANT ADVISED ON SEPTEMBER FIFTEEN IRVING KAPLAN CONTACTED OSCAR ALTMAN APPARENTLY IN REGARD TO A POSITION. ALTMAN INFORMED KAPLAN HE HAD DECIDED TO GO WITH FRANK COE. INFORMANT ADVISED ON SEPTEMBER FIFTEEN IRVING KAPLAN INFORMED HARRY MAGNOFF HE WAS LEAVING BY PLANE NINE A.M. SEPTEMBER SIXTEEN AND WOULD BE GONE FOR TWO WEEKS. KAPLAN WILL GO TO DETROIT, CHICAGO, MINNEAPOLIS, APPARENTLY ON BUSINESS TRIP. KAPLAN AND MAGNOFF DISCUSSED RECENT SPEECH OF SECRETARY WALLACE. KAPLAN BELIEVED THAT WALLACE WOULD HAVE TO QUIT AND HARRY AGREED. KAPLAN THOUGHT THAT WALLACE SHOULD ATTACH HIMSELF TO A GUY WHO QUOTE MAKES SOME SENSE LIKE TRUMAN UNQUOTE. BEATRICE MAGNOFF SEEKS TO ASCERTAIN FROM

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SECRET.

PAGE THREE

NATIONAL OFFICE OF THE LEAGUE OF WOMEN VOTERS IN WASHINGTON, D. C., WHAT STAND THE LEAGUE WILL TAKE ON RUSSIA. SEE PERIL IN VIEW OF THE SPEECH OF WALLACE AND PRESENT INTERNATIONAL CONDITIONS THAT THE TIME IS CRITICAL NOW AND THAT THE LEAGUE SHOULD TAKE UP THE RUSSIAN QUESTION. CONFIDENTIAL SOURCE ADVISED ON [redacted] (C)

HARRY WHITE AND FAMILY WILL DRIVE HIS DAUGHTER RUTH WHITE TO SCHOOL SEPTEMBER SEVENTEEN. BUREAU ADVISED. (S)

b1

HOTTEL

BUREAU BY MESSENGER

had had an opportunity to sink deeply into the jurors' mind.[1] As to the impact of the prosecutor's remarks, his own evaluation of them at the time they were made may be accepted. With notice of the danger, he thought enough of their persuasive value to repeat them again and again. The charge could have had no substantially curative effect. Cf. *Waldron* v. *Waldron*, 156 U. S. 361, 383 (1895); *Volkmor* v. *United States*, 13 Fed. (2) 594 (C. A., 6, 1926); *Pharr* v. *United States*, 48 Fed. (2) 767 (C. A., 6, 1931).[2] "The virus thus implanted in the minds of the jury is not so easily extracted." *People* v. *Levan*, 295 N. Y. 26, 36 (1945).

Two cases in this Court go far in holding that a mere instruction to the jury cured an alleged error of the type involved here. However, they do not reach to the level of prejudice which was created in this case.

In *United States* v. *De Vasto*, 52 Fed. (2) 26 (C. A., 2, 1931), cert. den. 284 U. S. 678, there was one reference to the failure of the defendant to testify. The Court held that the comment was invited by the defense and that, if there were error, it had been cured by the charge.

In *United States* v. *Di Carlo*, 64 Fed. (2) 15 (C. A., 2, 1933), there was also a single reference to the failure of the defendant to take the stand, also invited, to some extent, by the defense. In that case, moreover, there was an

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[1] Court had opened at 10:30 A. M. (S. M. 1023). The jury entered a few minutes later, after which defendants' summation started (S. M. 1029). Upon completion of this there was a five-minute recess, after which the prosecutor summed up (S. M. 1071). The jurors were excused to return at 2:30 P. M. (S. M. 1100), after lunch. It was after this that the jury was charged.

[2] See also, cases cited in dissenting opinion of Frank, J., in *United States* v. *Antonelli Fireworks Co.*, 155 Fed. (2) 631, 655 (C. A., 2, 1946), cert. den. 329 U. S. 742. While the remarks preceding the citation of those cases would seem to indicate that a contrary rule prevails in this Circuit, their context shows that such a contrary rule would not generally be applied unless the "trial Court promptly gave the offending counsel a 'stern rebuke' and immediately cautioned the jury to disregard the remark."

unrebutted inference to be drawn from the possession of recently stolen goods. Under those circumstances the Court held that the error was cured by the charge.

Absent from both cases, but present here, was the aggravated repetition of the impropriety [1] and its approval by the Court. These are substantial differences. We do not think such difference, in a situation in which every nuance may have had a critical effect, may be glossed over by the generality that the Trial Judge charged on the point.

This was not a case in which the evidence of guilt was overwhelming. Indeed it was insufficient. This, at least, is true: The jurors themselves were much troubled. About three hours after they had retired they indicated that there was no likelihood of a verdict (S. M. 1149, 1153). More than four hours after deliberation started they requested a transcript of the charge as to conspiracy "particularly with regard to the degree of participation" (S. M. 1154)—an obvious reference to Moskowitz. Cf. *Bollenbach* v. *United States*, 326 U. S. 607, 612 (1946).

The problem presented is not merely one of trial etiquette or of technical error. The affected privilege is a substantial one.[2] *Bruno* v. *United States*, 308 U. S. 271, 294 (1939). A reversal may be avoided only if it *affirmatively* appears that *Moskowitz* was not prejudiced. *Bihn* v. *United States*, 328 U. S. 633, 638 (1946).

The affirmative appearances in this case point the other way. Whether the defendant is to be imprisoned should not turn upon the ungrounded speculation provided by this record that she could not have fared better even if her rights had been respected.

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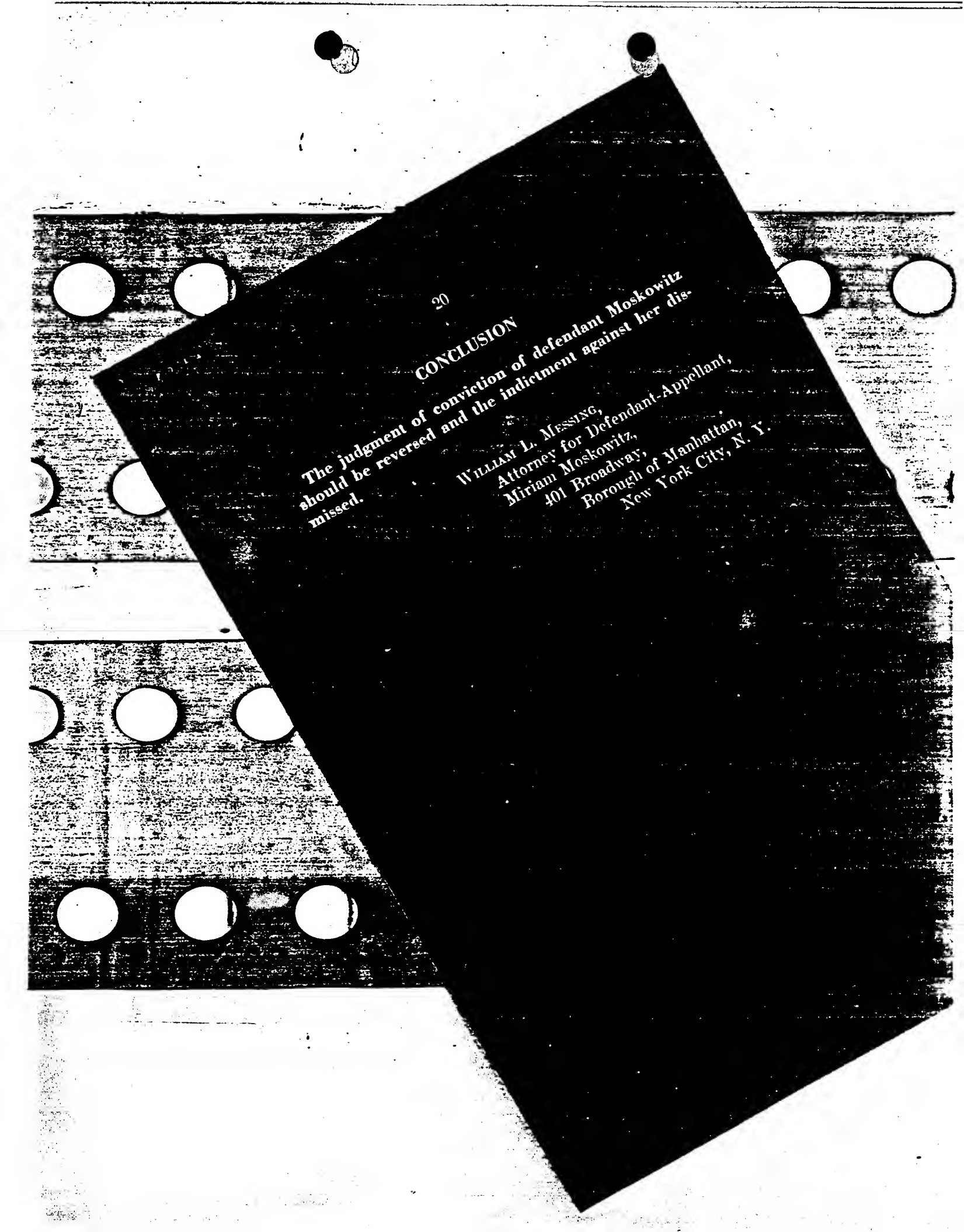
[1] Cf. *Berger* v. *United States*, 295 U. S. 78, 89 (1935).

[2] It has been suggested that in such a case the "harmless error" concept may not apply. See *Kotteakos* v. *United States*, 328 U. S. 750, 764-765 (1946).



CONCLUSION

The judgment of conviction of defendant Moskowitz should be reversed and the indictment against her dismissed.

WILLIAM L. MESSING,
Attorney for Defendant-Appellant,
Miriam Moskowitz,
401 Broadway,
Borough of Manhattan,
New York City, N. Y.

Federal Bureau of Investigation
United States Department of Justice
Washington Field Office

August 12, 1946 51474

PERSONAL AND CONFIDENTIAL

Director, FBI

RE: GREGORY
ESPIONAGE - R
(JAMES R. NEWMAN
HERBERT S. MARKS)

Mr. Tolson
Mr. E. A. Tamm
Mr. Clegg
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Egan
Mr. Gurnea
Mr. Harbo
Mr. Hendon
Mr. Pennington
Mr. Quinn Tamm
Mr. Nease
Miss Gandy

Dear Sir:

Reference is made to the Personal and Confidential letter from the Director to the Washington Field Office dated March 27, 1946, regarding the above-named individuals.

There is transmitted herewith a memorandum dated July 22, 1946, setting forth a review of the investigation to date concerning these individuals and in view of the fact that it appears that the above-named individuals are actively participating in the SILVERMASTER conspiracy, no further investigation is being conducted unless otherwise instructed by the Bureau.

Very truly yours,

Guy Hottel

RECORDED & INDEXED
GUY HOTTEL

Encl. (1)

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 1-29-76 BY

100-17493

SECRET

CONFIDENTIAL

Subject: [illegible]

[illegible]

MR. JAMES R. NEWMAN and
HERBERT S. MARKS

Reference is made to a personal and confidential letter from the Director to the Washington Field Office dated March 27, 1946, regarding the above persons. In this letter the Director desired an immediate intensive, and a highly discreet investigation be conducted in this case, concerning the background, activities, contacts and political and ideological orientation of JAMES R. NEWMAN and HERBERT S. MARKS.

At the present time the background investigation of both subjects has been completed in this office. Both subjects have been placed under physical surveillance and the following events have occurred which serve either to tie both subjects into the SILVERMASTER case or to cast suspicion on their activities.

Classified by 50-5-3
Declassify on: OADR
3047 DMH 53 6/6/8

JAMES R. NEWMAN

A review of the files in the Washington Field Office reflects the following information.

[redacted] NEWMAN in 1940 and 1941 was the employer of MICHAEL [redacted] t 79th Street, New York City. KENDELMAN is a subject in this case in the New York Office, having associated with one JOSEPH ECKHART, an alleged NKVD Agent. KENDELMAN was introduced to Informant BENTLEY by ECKHART as "MARCEL", BENTLEY corresponded with KENDELMAN in Paris regarding the Italian underground work for the Russians in World War II. KENDELMAN's correct name is MICHAEL NICHOLAS DELMAN. He is presently under surveillance in the New York Office. (Serials 5, 7, 14, 47, and 143, etc.)

In the letter from the Bureau referred to above, regarding these individuals, the Bureau's informant advised that NEWMAN was closely associated with Assistant Secretary of War PETERSEN, and PETERSEN was a member of the alleged espionage ring with [redacted] NEWMAN's Civil Service application reflects that HOWARD C. [redacted] Assistant Secretary of War, was set forth as a ref[illegible] secured employment with the U. S. Government.

SECRET 65-56402 - 1523

CONFIDENTIAL

ENCLOSURE

100-17,493 - ~~CONFIDENTIAL~~ SECRET

The Bureau informant also advised that NEWMAN and DR. EDWARD U. CONDON, Bureau of Standards, are members of Senator BRIAN McMAHON's Senate Committee on Atomic Energy, and that CONDON "is an espionage Agent in disguise". Physical surveillance of NEWMAN has disclosed that he is seen constantly during the day with DR. CONDON and Senator McMAHON, both at the Senator's office at the Capital, and CONDON and NEWMAN in NEWMAN's office at the Federal Loan Agency Building. (Serial 1935, etc.) DR. CONDON is a friend of NATHAN GREGORY SILVERMASTER, subject of this case. (Serial 1364, page 101) According to a highly confidential informant of the Washington Field Office, CONDON is regarded as pro-Russian and pro-Communist in his political views. (Serial 1622, page 4; serial 2080, pages 100, 101, 102)

It is noted that the files of this office reflect that NEWMAN wrote a book entitled, "Mathematics And The Imagination", in conjunction with DR. EDWARD KASNER, Professor at Columbia University, New York City. KASNER was given as a reference in his Civil Service application by VICTOR PERLO when he applied for employment with the War Production Board, and incidentally, where NEWMAN worked at that time. (Serial 2080, page 103.)

NEWMAN was employed from 1939 to 1941 by the American Jewish Committee in New York City. The files reflect that this committee has urged early permanent action of Fair Employment Practices legislation by the United States Government. (Serial 2080, page 103.)

The subject has been observed riding to and from work, having as his guests and visiting at the homes of THOMAS I. EMERSON, HAROLD W. STEIN, and BYRON S. MILLER, all three of whom are subjects of Hatch Act cases in this office, and on whom there are additional references in the files, showing their association with Communist front organizations. (Serial 2080, pages 106-111.) It is also noted that HAROLD and LORIN STEIN are friends of ALGER HISS, subject of the SILVERMASTER case in this office. (Serial 2080, page 110.)

Investigation developed that NEWMAN telephonically contacted DR. E. P. WIGNER, Professor at Princeton University. [redacted] WIGNER played an important part in the development of the atomic bomb. (Serial 2473, page 97.)

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It has also been determined through a surveillance of subject's activities, that he is a close personal friend of HELEN GAHAGAN DOUGLAS, Congresswoman from California, having visited at her home prior to leaving on his present vacation. (Serial 2473, page 99.) NEWMAN has rented his home to Mrs. DOUGLAS for a period of two months while he is on his vacation. ERNA ROSENBERG, wife of subject in this case, discused attending a party with HELEN GAHAGAN DOUGLAS. (Serial 2473, page 105.) Confidential Informant [redacted] advised that BEATTIE MAGDOFF, another subject in this case, discussed having HELEN GAHAGAN DOUGLAS speak for a meeting on March 25, 1946, at which time Mrs. MAGDOFF advised that Mrs. DOUGLAS was very interested in atomic energy. (Serial 2473, page 105.) (U)

NEWMAN was observed attending a dinner at the home of HELEN GAHAGAN DOUGLAS where MYER COHEN of Silver Spring, Maryland was also in attendance. Washington Field Office files indicate that COHEN is a friend of HAROLD GLASSER, another subject in the SILVERMASTER case. (Serial 2473, page 105.) At this same dinner and on subsequent occasions, the subject has been observed with ALFRED FRIENDLY, a writer on the Washington Post Newspaper. The indices reflect that FRIENDLY'S wife is a member of pro-Communist groups and front organizations in Washington, D. C, and that ALBERT FRIENDLY is a friend of HARRY MAGDOFF, another subject in the SILVERMASTER case. (Serial 2473, page 107.)

In the June 17, 1946 issue of the New Republic, ALFRED FRIENDLY was the author of an article entitled "Chain Reacting Liberal", which is an article dealing with the subject's activities and progress since his first employment by the United States Government in the early 1940s.

PHILLEO NASH was also observed attending the above dinner with subject. The files of this office indicate that NASH has been an ardent supporter of negroes in Washington, D. C. (Serial 2473, pages 108, 109.) [redacted], investigated in the case entitled, "COMINTERN APPARATUS". (Serial 2473, page 110.) (C)

RICHARD MELVIN BISSELL, JR., employed by the Office of War Mobilization and Reconversion, has been seen with subject on several different occasions. The files reflect that he is a friend of WILLIAM REMINGTON another subject in the SILVERMASTER case. (Serial 2473.)

NEWMAN has received mail from the law firm of GREENBAUM, WOLF and ERNST, New York City. The files of this office reflect that this law firm handled the original incorporation of the Amtorg Trading Corporation in New York City in 1924. General EDWARD S. GREENBAUM, a reference of subject in subject's Civil Service application, is a member of this law firm in New York City. (See report dated 7-19-46.) (U)

NEWMAN has communicated by telephone, telegram and letter with RABBI IRVING F. REICHERT, and his wife, MADELINE, both of San Francisco, California, on several occasions. (See report dated 7-19-46.) (U) The REICHERTS are close friends and possible relatives of NEWMAN. The San Francisco Field Division advises that IRVING F. REICHERT was a member of the Executive Committee of the Russian War Relief on March 31, 1942, and a national sponsor of the Japanese-American Citizens League of Salt Lak City, Utah in December, 1945. He and his wife are known Communist followers and contribute financially to the Communist Party. He also was a sponsor of the Bureau to Aid Spanish Democracy in 1937, and was a member of the Board of Directors of the San Francisco School of Social Studies in 1939. (See serial 2560)

HERBERT SIMON MARKS

[redacted]

(Serial 1935, page 93.)

(Serial 1935, page 95.)

Refer

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Confidential Informant [redacted] advised that MARKS had been in telephonic contact from his residence, with DR. R. J. OPPENHEIMER, Pasadena, California, in 1945. OPPENHEIMER is at the present time employed by the U. S. Government, working with the State and War Departments on atomic energy. He was one of the foremost and prominent scientists who worked on the development of atomic energy at Los Alamos, New Mexico. He maintains a desk at the State Department in subject's office when he is in Washington, D. C. A highly confidential informant of the Washington Field Office feels that OPPENHEIMER is inclined toward Communist Party doctrine. OPPENHEIMER is the subject of the San Francisco case because of his connections with atomic energy and his association with high ranking Communist Party members in the San Francisco area. He has contributed financial aid to the Communist Party in that area and attended meetings of the party there. (Serial 2080, pages 84, 85, 86.)

The subject has been observed on several occasions with Miss ANN WILSON, personal secretary of DR. OPPENHEIMER, and a former secretary in the office of General GROVES, who is in charge of the development of atomic energy of the United States Government during the war.

On May 24, 1946, MARKS made a check payable to DR. R. J. OPPENHEIMER in the amount of $50. (See report dated 7-19-46.)

A highly confidential informant of this office advised that MARKS is a close associate of the members of the Emergency Committee for Atomic Energy, which Committee is dominated by a pro-Communist element. The informant advised that MARKS endeavored to suppress DEAN ACHESON's original State Department report on atomic power because it did not follow the Party line.

Through a confidential source it was ascertained that MARKS had in his possession several articles published by the League of Women Voters of Washington, D. C., an alleged Communist front organization. In addition, he had the 1946 May issue of the Information Bulletin of the Spanish Embassy, which had been addressed to him at his residence; also a copy of the July 9, 1945 issue of the New Republic, in which there was an article dealing with the AMERASIA case.

U (C) [MARKS has received mail from NANETTE and ALFRED BERMAN of New York City.] The Washington Field Office indices reflect that ALFRED BERMAN was the subject of a Hatch Act case in this office. He and his wife appear on the membership list of the Washington Committee for Democratic Action; he was a member of the New York chapter of the Lawyers Guild. She was the labor chairwoman of the D. C. League of Women Shoppers in 1942. (See report dated 7-19-46.)

MARKS also received mail from MORRIS LLEWELLYN COOKE, former REA Administrator. The files indicate that COOKE contributed money to several Communist Party dominated groups and that he was a former consultant to SIDNEY HILLMAN. (See report dated 7-19-46.)

[redacted] (U) (Serial 2552.)

b1

[redacted] (S)

b1

Through a confidential source of information, it was ascertained that MARKS or his wife had written the telephone number National 9121, Extension 96, on a piece of letter paper. This is the telephone number of the Soviet Government Purchasing Commission and the extension number of ANATOLI BARONOVSKY, representative of the Ukraine Republic to the United Nations Organization. (See report dated 7-19-46.) (U)

MARKS and his wife received a wedding announcement in May, 1946 which announced that Lt. RANDOLPH GILMAN of Ithan, Pennsylvania was marrying MARGARET IRWIN WARREN. The files indicate that WARREN is a friend of Commander and Mrs. ZAPOROSCHENKO of the Soviet Government Purchasing Commission. (See report dated 7-19-46.) (U)

Another interesting development in the physical surveillance of subject reflects that he obtains the majority of his mail at the General Delivery window of the Central U. S. Post Office instead of at his residence.

MARKS received a letter dated July 14, 1946 from RAYMOND S. BROOKS of Nashville, Tennessee, informing MARKS that he is back working in their "old territory" organizing the CIO. (U)

* * * * *

In regard to the proof of allegations made by the Bureau's informant, it is noted that in the investigation to date, only a few of these allegations have been substantiated.

~~SECRET~~ CONFIDENTIAL

100-17,493

1 - NEWMAN, through his employment with the Office of War Mobilization and Reconversion, his contact with DR. EDWARD U. CONDON, and his work on Senator BRIAN McMAHON's Senate Committee on Atomic Energy, has access to a good deal of information regarding atomic energy.

2 - NEWMAN is a close associate of DR. EDWARD U. CONDON and CONDON is known to have been in contact with NATHAN GREGORY SILVERMASTER.

3 - Both NEWMAN and MARKS have associates and friends who are pro-Communist and pro-Russian.

It is believed that a technical surveillance should be placed on both of the above subjects, considering the information developed above, inasmuch as both of these persons are known to be closely associated with persons having confidential information regarding atomic energy. (X)(U)

EHM:IPB
100-17,493

F.B.I. RADIOGRAM

[redacted]

FROM RIO DE JANEIRO 9-5-46 MR 146 7:13 PM EST

GREGORY CASE, ESPIONAGE - R.

[redacted]

RECEIVED: 9-5-46 7:31 RECORDED EST

INDEX

65-56402-154

F B I

37 SEP 19 1946

[redacted]

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3-50

F.B.I. RADIOGRAM

Mr. Belmont
Mr. D. M. Ladd
Mr. Clegg
Mr. Coffey
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Egan
Mr. Gurnea
Mr. Pennington
Mr. Quinn Tamm
Mr. Nease
Miss Gandy

CONFIDENTIAL

[redacted] (C) bl

FROM BUENOS AIRES 9-6-46 NR 65 12-30 PM EST

GREGORY.

[redacted] (C) bl

RECEIVED: 9-7-46 1-06 PM EST IMR

4-22-83
Classified by 50-5 RJO/MW
Declassify on: OADR
3042 PWJ/RJB
3/31/88

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EX-14 100-56402-1525
F B I
37 SEP 13 1946

[redacted]

3 SEP 4 1946 CONFIDENTIAL (C) bl

1-50a

F.B.I. RADIOGRAM

Classified by 3042-AUJ/mdb
Declassify on: OADR 3/31/94

[redacted] 7c

FROM BUENOS AIRES 9-9-46 NR 66 6:52 PM EST

GREGORY. AMERICAN LEGION MEMBER AUSTIN C. ODE ADVISES THAT ORGANIZATION HIGHLY INCENSED OVER PUBLICATION OF AMBASSADORS OFF-RECORD REMARKS MADE BEFORE THEM AND THEY ARE OF DEFINITE OPINION [redacted] RESPONSIBLE FOR LEAK. THEY ARE CONTEMPLATING REQUESTING [redacted] RESIGNATION FROM POST.

RECORDED 65-2402-526

INDEXED 322 37 SEP 18 1946

RECEIVED 9-9-46 6:59 PM EST

F B I

[redacted] (6)

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CC-150

L BUREAU OF INVESTIGATIO
ATES DEPARTMENT OF JUSTI

SEPTEMBER 11, 1946

ROUTINE RADIOGRAM

RECORDED
65-56402-1526
EX-14

To: COMMUNICATIONS SECTION.

Transmit the following message to:

MR. HERBERT M. CLEGG
THE AMERICAN EMBASSY
BUENOS AIRES, ARGENTINA

CONFIDENTIAL

[redacted]

BERNARD S. REDMONT. [redacted]

[redacted]

FOR STRICTLY CONFIDENTIAL INFORMATION. [redacted]

[redacted]

REFERENCE POSSIBLY TO REDMONT.

Classified by SP-3 RCH/AK
Declassify on: OADR
4-22-83
3042 PWJ/LB
3/31/94

VHB:AJB

Tolson
E. A. Tamm
Clegg
Coffey
Glavin
Ladd
Nichols
Rosen
Tracy
Carson
Egan
Hendon
Pennington
Quinn
Nease
Gandy

COPIES DESTROYED
SEP 24 1946

SENT VIA 9-11-46 8:06 PM

Per

RECEIVED
U.S. DEPT. OF JUSTICE
1946 SEP 11 PM 4:05
FBI

4-750 (Rev. 4-17-85)

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XXXXXX
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FEDERAL BUREAU OF INVESTIGATION
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☐ Information pertained only to a third party. Your name is listed in the title only.

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